

BLANK

PAGE

BLANK

PAGE

BLANK

PAGE

IN THE
United States Court of Appeals

FOR THE SIXTH CIRCUIT

No. 15,769

Joint Appendix

INDEX TO VOLUME 2

	PAGE
Smooke, Nathan, President, Lady's Choice Foods	
Direct	768a (Cont. from Vol. 1)
Stipulation—Nielsen Food Index ..	820a
Giachetti, Salvatore, President, Linco Products Corporation	
Direct	821a
Cross	862a
Giachetti, Mario, Secretary-Treas- urer Linco Products Corporation	
Direct	833a
Cross	855a

WITNESS		PAGE
	Redirect	858a
	Recross	859a
Hahn, Edwin B., Sales Manager, Linco Products Corporation		
	Direct	844a 859a
	Cross	860a
	Redirect	862a
MacDonald, Neil A., Treasurer, Hood Chemical Company		
	Direct	863a
	Cross	869a 885a
	Redirect	871a 891a
Kunin, Benjamin, Sales Manager, Hood Chemical Company		
	Direct	871a
	Cross	892a
	Redirect	895a
Olkin, Alfred, Secretary-Treasurer, Rose-Lux Chemical Company		
	Direct	899a
	Cross	912a
Rinaldi, Vincent, President, No- Worry Chemical Company		
	Direct	916a
Henkel, William A., Assistant Treasurer, J. L. Prescott Com- pany		
	Direct	926a
	Cross	929a

WITNESS**PAGE****Prescott, Robert, Treasurer, J. L.****Prescott Company**

Direct	930a
Cross	946a
Redirect	949a
Recross	949a

950a**Brower, Leon, President, Sunlight
Chemical Corporation**

Direct	953a
Cross	973a
Redirect	977a

**Buchman, Solomon S., Partner,
Savol Bleach Company**

Direct	978a
Cross	993a
Redirect	998a

**Gardiner, Rexford A., President,
Gardiner Manufacturing Com-
pany**

Direct	1000a
Cross	1016a
Redirect	1020a 1021a
Recross	1021a

**Jones, J. W., President, Jones
Chemicals, Inc.**

Direct	1022a
Cross	1038a
Redirect	1046a

**Riccardi, John, President, Roman
Cleanser Company**

Direct	1049a
--------------	-------

WITNESS**PAGE**

Cross	1071a
Redirect	1080a
Olsen, Paul C., Marketing Research, Topics Publishing Company	
Direct	1082a
Mendleson, Samuel, Chairman of the Board-Treasurer, B. T. Bab-bitt, Inc.	
Direct	1084a
Snow, Edwin A., Advertising Manager, The Procter & Gamble Company	
Direct	1132a
Cross	1143a
Redirect	1145a
Smith, Norman D., Economist, Federal Trade Commission	
Direct	1146a
Stipulation—Nielsen Food Index	1155a

Case Presented By Respondent

Montgomery, V., Vice-President, Manufacturing, The Clorox Company	
Direct	1168a
Cross	1186a
Redirect	1192a
Leazar, M. A., Vice-President and Purchasing Director, Handy-Andy Super Markets	
Direct	1192a
Cross	1198a

WITNESS**PAGE**

Royer, Arnold L., Manager, General Advertising, Cleveland Press

Direct 1204a

Trimpe, Bernard F., Vice-President, Sales, The Clorox Company

Direct 1211a 1349a 1461a

Cross 1356a 1470a

Redirect 1484a

Bennett, George R., President-Treasurer, Bennett Sales Corporation

Direct 1261a

Cross 1273a

Keller, William, Assistant Buyer, Great Atlantic and Pacific Tea Co.

Direct 1287a

Cross 1290a

Eubanks, Marvin J., Grocery Merchandiser, Kroger Company

Direct 1291a

Cross 1299a

Towers, William M., Vice-President, Treasurer, The Clorox Company

Direct 1303a

Cross 1310a

Redirect 1314a

Nickelson, Harry, Vice-President, A. C. Neilsen Company

Direct 1314a 1442a

Cross 1334a 1444a

WITNESS**PAGE**

**Hellman, Marco F., Partner, J.
Barth and Company**

Direct 1337a

**Bissmeyer, Alvin A., Buyer, Co-
lonial Stores, Inc.**

Direct 1341a

Cross 1344a

Redirect 1348a

Recross 1348a

**Bellingall, Eric, Vice-President,
Honig, Cooper, Harrington, and
Miner**

Direct 1364a

Cross 1406a

Recross 1437a

**Morgens, Howard Joseph, Presi-
dent, The Procter & Gamble Com-
pany**

Direct 1448a

**Werner, William G., Director, Pub-
lic and Legal Services, The Proc-
ter & Gamble Company**

Direct 1461a

Rebuttal

**Stoneman, Alan C., President,
Purex Corporation, Ltd.**

Direct 1492a

Cross 1496a

WITNESS**PAGE**

Northrup, Jack, Director, Marketing Research and Product Planning, Purex Corporation, Ltd.

Direct 1494a

Smith, Norman D., Economist, Federal Trade Commission

Direct 1500a

Redirect 1505a

Stipulations:

As to testimony of A. E. Gilfillan, Legal Department, American Stores Company 1509a

As to testimony of R. A. Gardiner, President, Gardiner Manufacturing Company, Inc. ... 1512a

As to testimony of L. S. Frantz, Vice-President in Charge of Sales, Loblaw, Inc. 1512a

As to testimony of Lawrence Gordon, Executive Vice-President, Beam-Cast, Inc. 1515a

Remand Proceedings

Nickelson, Harry, Vice-President, A. C. Neilsen Company

Direct 1532a

Cross 1550a

Stratton, Lawrence, Economist, Federal Trade Commission 1552a

BLANK

PAGE

Nathan Smooke—Direct

Q. Where is it produced, sir? A. In San Francisco and in Los Angeles.

Q. Where is it sold? A. Throughout the state of California, and portions of Arizona and Nevada.

Q. Are all your company's products sold in the same area? A. Yes, with the exception of food products; we have some support business, but we do not have any support business on bleach.

Q. Now, do you sell your products to direct salesmen, or do you use a broker or distributor setup? A. All of our sales in California and Arizona are through our direct salesmen. We have a Cal-Zona Company in Arizona, and we have these brokers, for example, in the Hawaiian Islands for our other products.

Q. What factors determine the sales area in which you sell your liquid bleach, sir?

(Tr. p. 1757)

A. Of course, transportation is the major factor.

* * * * *

Q. Mr. Smooke, let me ask you, sir: Is your appearance here today in response to a subpoena duces tecum? A. Yes.

Q. Did that subpoena duces tecum call for price lists used by your company during 1956 and '57? A. I have it in my folder, if I could refer to it.

The 24-pints, \$2.10 per case; quarts, 12 quarts per case, \$1.41; six half-gallons, \$1.35; four one-gallons, \$1.40.

Q. Are those your current list prices, sir? A. This is the information I have prepared for me by my office. I believe it to be correct.

Q. Now, do you know if your company grants any advertising

Nathan Smooke—Direct

(Tr. p. 1758)

allowance or case allowance discounts from those figures which you have given us? A. At the present time, I don't; at least, in Los Angeles, we do not have any special allowances at this time, and I would have to refer to San Francisco at this time to see if they have a promotion at this time. I don't know whether they do or not.

* * * * *

Q. Mr. Smooke, in your years of producing and selling liquid bleach since 1925, have you had occasion to become familiar with or to study the competitive problems, factors involved in the sale of household liquid bleach? A. Yes, I have.

Q. What has been the basis of your knowledge or familiarity, sir? A. The actual contact with competition in the field and

(Tr. p. 1759)

with the problems connected with the bleach business.

Q. Will you tell us what are the competitive factors which determine the success or the failure of your company in selling household liquid bleach?

* * * * *

A. It is quality, price, service, advertising; all those factors enter into problems in meeting competition.

By Mr. Tincher:

Q. All right, sir; would you tell us what you mean by the factor, service? A. Service in contacting the retail store, obtaining his order, having the order delivered and shipped, and properly displayed in the store.

Q. Will you tell us, sir, what factors your company considers in setting the price, the charges for household liquid bleach?

* * * * *

Nathan Smooke—Direct

A. It depends on the prices that we have to meet in order

(Tr. p. 1760)

to sell our products. These prices are set by what we call our major competition, and we have to be in line with competition, or we don't sell our product.

By Mr. Tincher:

Q. What products do you mean by "competition," sir?

A. I would say—do you want specific brand names, is that it?

Q. Yes, in your sales area. A. I see. Well, of course, there are Clorox, Purex, chain stores who pack their own bleaches, and companies that pack private label bleaches.

Q. All right, sir; when you said that you have to be in line with those prices, can you give us a more definite idea of what you mean by that term? A. Since our product is not a highly advertised product, our price has to be, our product has to be sold in a price range that would attract the user to pick our product up off the shelf.

Hearing Examiner Haycraft: By that, you mean it has to be lower than the leading brand?

The Witness: It would be, in order to have some movement off the shelf, yes.

By Mr. Tincher:

Q. You have personal knowledge, sir, generally speaking, of course, of how much lower than the leading brands your liquid

(Tr. p. 1761)

bleach sells for in the grocery stores?

A. It would sell from two to three cents per bottle under the nationally advertised brands.

Nathan Smooke—Direct

Q. Mr. Smooke, does your company manufacture the liquid bleach completely, or does it convert or cut a stronger solution down to the liquid bleach that you sell? A. We make the actual product that we pack; when we sell a 5¼, we make 5¼. When we sell the 16 percent, we make the 16.

Q. Do you have any knowledge as to the sodium hypochlorite solution of other brands of bleaches sold in the sales area that you sell your bleach in? A. Only that the label reads the same as ours does, and we have the same strength product in our packages.

Q. In selling your household liquid bleach, does your company encounter any difficulty in obtaining grocery store shelf space, sir? A. That's a difficult problem at all times.

Q. What approach do you use, or how do you go about obtaining grocery store shelf space? A. By the personal contact our salesman has with the store

(Tr. p. 1762)

that he is calling upon.

Q. All right, sir, and what methods, or what tools does your salesman use per company policy in calling on grocery store people in an attempt to get this grocery store?

* * * * *

A. I am trying to show our product would make him the better net or a higher gross on his cost against the selling price, by him knowing that particular groceryman better than the other salesmen, by using his personal influence over the groceryman himself, or during the promotions when we have deals and specials where he can induce groceryman to give him a better break on the shelf or on stacks in the stores.

By Mr. Tincher:

Q. What type of promotions do you have reference to?

Nathan Smooke—Direct

A. Oh, either buy so many cases and get so many free, or so much per case off if they buy a certain number of cases of bleach products.

Q. Are these, then, promotions aimed at the grocer himself, rather than at the consuming public? A. The promotions are aimed either, No. 1, to meet compe-

(Tr. p. 1763)

tition if there is already a deal in effect or, No. 2, if we think it is time for our company to put on a deal, of course, everything is aimed to the ultimate consumer, so that we get her to pick up the product.

Hearing Examiner Haycraft: I think what he is driving at there is, whether those tools that you have described refer to the profit that the dealer might make on your products. Does that contemplate that he would reduce the price further?

The Witness: Yes, he would. He would take the deal and saving, and pass that along to the consumer. However, in some cases he might buy in advance and store some product in his back room and make a little extra profit on that at a later time.

By Mr. Tincher:

Q. Can you tell us, sir, the number of bleach producers selling in the same sales area that you sell in and, that is, of course, to your knowledge? A. Well, there are Clorox, Purex, Jefferson Manufacturing Company, and ourselves. That is in the $5\frac{1}{4}$ percent.

* * * * *

Q. Let me ask you, first, do you consider your household bleach, the $5\frac{1}{4}$, as being competitive with the industrial 16 percent?

A. No, they have no relationship to one another.

Nathan Smooke—Direct

(Tr. p. 1764)

Q. All right, sir, I do not want the others, then.

Can you tell us, sir, what percentage of your household bleach is sold in grocery stores, as distinguished from drug stores, variety stores, or any other kind of stores? A.

We do not have any distribution in drug stores or variety stores. It is all in grocery stores.

Q. Is any one of the liquid bleach producers a principal or a stronger competitor than the other in your sales area?

A. No, I classify them all on an equal basis.

* * * * *

(Tr. p. 1765)

* * * * *

Q. How do you determine, or are you able to determine the market share that your product enjoys in your sales area, liquid bleach, of course? A. We receive the market analysis made by the L. A. Times here, and various newspaper throughout the state, that have a service that breaks down the proportion of the market that each brand enjoys.

Q. And how does that,—is that a public document published by the L. A. Times or is that something you subscribe to? A. We're on their mailing list but I believe anybody can obtain that for information if they so desire.

(Tr. p. 1766)

* * * * *

Q. Is there any special or unique quality about your household liquid bleach which aids it in sales over competitors' brands? A. No.

Q. Is there any competitors' brand in your sales area which has any unique or special quality which aids it competitively? A. I don't think so.

Q. Does your company produce any soap or detergents? A. No, they do not.

Nathan Smooke—Direct

Q. Or powdered cleanser? A. No.

* * * * *

Q. Do you do any advertising of your household liquid bleach, sir? A. Yes, we do.

Q. Is the advertising of your household liquid bleach only or

*(Tr. p. 1767)

of your products is general? A. We advertise it more or less in a family way of advertising where we, for example, on our radio broadcasts will mention Sanickor or our Lady's Choice products and Challenge Oil and so forth. We have a number of brand names and we don't point towards any one where we just try to get the names of our products before the consuming public.

Q. Is that a quarter-hour radio program, sir, as distinguished from spots on radio? A. No, all we've ever had has been spots.

Excuse me, we've had a newscast at noon up North at one time which I guess you would consider to be a program.

Q. Have you used the TV in advertising your products? A. We had, at one time.

Q. How long ago was that, sir? A. I would say about two years ago.

Q. From the view of your company, sir, which is the most effective media for selling liquid bleach and your products?

* * * * *

Q. Radio or television? A. I don't have an answer to that question. That's an argument we've had in our firm for years.

* * * * *

(Tr. p. 1768)

* * * * *

Nathan Smooke—Direct

Q. Can you tell us, though, sir, why you are not using TV at the present time? A. It's far too expensive for our firm to use.

Q. Do you use any other media of advertising, do you use magazines? A. No, we do not.

Q. And the same for daily newspapers? A. That's right. No magazines or newspapers.

Q. Is there any reason in particular for not using those, sir? A. In the high cost of advertising.

Q. Does your company, in selling household liquid bleach, have any special seasonal promotion of the bleach at any particular time of the year? A. No particular regularity on our deals of specials, no.

Q. Do you have and you, of course, I mean your company, sir, does your company have any direct contact with the housewife, and by that I mean, do you go out and survey housewives to find out what she is using or what she likes, anything of that nature? A. No, we don't.

Q. I believe you mentioned a while ago, sir, private labels

(Tr. p. 1769)

sold by some groceries, chains. Can you tell us with reference to the price your Saniclor, for example, sells in grocery stores, the price generally speaking that these private labels in chain stores sell for? A. Our Saniclor will sell for at least one cent per bottle higher than the private label bleaches.

* * * * *

Q. Is your company affiliated with, sir, or a subsidiary of any other corporations? A. No, it is not.

Q. I am sorry, that is one of your, or one of my double-barreled questions. Is the answer to both parts of the question, "No, sir?" A. We're not a subsidiary of, nor affiliated with any other company.

Alan C. Stoneman—Direct

Q. I believe you mentioned that you produce some private labels for grocery chains, is that correct, sir? A. Yes, we do.

Q. Is the private label bleach that you produce the same 5.25 sodium hypochlorite solution as your Saniclor bleach?

A. It's the exact same product.

Q. Has your company considered expanding its sales territory.

(Tr. p. 1770)

for liquid bleach in recent years? A. No, we haven't.

Q. Is your company producing liquid bleach at full capacity? A. No, we're not.

(Tr. p. 1774)

Room 229,
Federal Building,
Los Angeles, California.

April 24, 1958.

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

(Tr. p. 1776)

PROCEEDINGS

Alan C. Stoneman

resumed the stand and testified further as follows:

DIRECT EXAMINATION (continued)

By Mr. Tinch:

Q. Mr. Stoneman, is the Purex Corporation, Ltd. a national advertiser? A. Yes.

Alan C. Stoneman—Direct

Q. What media does your company use in its advertising?

A. Our principal media for the last two years has been network television, NBC and CBS. That advertising has been supplemented by some TV spots and radio spots, and also by national magazine advertising, color and black and white, and a small amount of newspaper.

Q. All right, sir. Now, do the networks for television that you have mentioned grant discounts for volume or continuity of advertising?

A. Yes, they do.

Q. Are you familiar with this discount structure?

A.

I am familiar with NBC's and CBS's discount structure.

Q. Would you explain to us as briefly as possible, sir,

(Tr. p. 1777)

what this discount structure is, and how it operates to the advertiser?

* * * * *

A. Well, very simply stated, the maximum discount that an advertiser can earn on NBC is 25 percent for nighttime, and 30 percent for daytime network television. NBC, up until two weeks ago, had also a 25 percent daytime discount, but they have just increased it.

The discount on CBS is 25 percent, whether it be daytime or nighttime television.

By Mr. Tinker:

Q. What is this discount based on, sir?

A. The discount is based on the time purchased, the amount of time and its continuity.

Q. Now, when a manufacturer purchases advertising time on television networks, is it possible for him to lump together all his products in attempting to achieve the discount rates?

A. Yes.

Q. Does the Purex Corporation do that, sir?

A. Yes.

Alan C. Stoneman—Direct

Q. What expenditure is required on the National Broadcasting

(Tr. p. 1778)

Company network to earn the maximum discount on time?

A. There are four different rates for network time; there is an A, B, C, and D rate, depending upon the time of the day or evening that the show is run.

Taking as an illustration the nighttime rate, NBC require an expenditure of about \$3 million to earn the maximum discount.

Q. What year would that be, sir? A. The present one.

Q. At the present time. At the current time, or in 1957, —if it makes a difference, I don't know—what amount did the Purex Corporation spend in advertising by that network?

* * * * *

A. We spent about a million four on NBC.

By Mr. Tincher:

Q. That would be \$1,400,000? A. Yes.

Q. What discount did that entitle your corporation to?

A. We earned a discount of six percent.

I might explain, Mr. Tincher, that any figures I give you on our expenditures will be for time and program, both; whereas, the discounts are applicable to time buys only.

Q. I see. And can you tell us approximately, sir, what percentage of your total cost is constituted by the cost for program, as distinguished from time?

(Tr. p. 1779)

A. Well, on our most recent program, the Perry Mason Show, it was about fifty-fifty; fifty percent time and fifty percent program.

Alan C. Stoneman—Direct

Q. Is any discount earned by the program? A. No.

Q. Do you know what expenditure is required on CBS, Columbia Broadcasting System, on the television to earn the maximum discount on time? A. It is approximately the same as it is on NBC for the same class of time.

Q. How much did your company spend in the last fiscal year, or calendar year, whichever is applicable, on this network? A. We spent about \$2,400,000.

Q. What rate of discount was that; was that including programming, also? A. Yes.

Q. Give us the breakdown between programming and time for your company; approximately the same? A. About fifty-fifty.

Q. What rate of discount on time did you earn from that expenditure? A. We earned 15 percent.

Q. Now, sir, are you familiar with discount structures, if any, in magazines? And, by that, I mean nationally circulated magazines.

(Tr. p. 1780)

A. I am familiar with the discount structure in the magazines that we use; at least, with the important magazines that we use.

Q. All right, sir. Let me ask you if you can tell us what those magazines are? A. Well, the most important magazines we have used recently are Life, Ladies Home Journal, and Better Homes and Gardens.

Q. Would you tell us the maximum discount which an advertiser can obtain on those magazines? A. In Life, it is 17 percent; in Ladies Home Journal, it is 12 percent; and, Better Homes and Gardens; it is 12 percent.

(Tr. p. 1781)

Q. Can you tell the amount of expenditure required in order for the advertiser to qualify for those maximum dis-

Alan C. Stoneman—Direct

counts? A. In Life it is about \$2,000,000, I think it is \$2,100,000. In Ladies Home Journal—in Better Homes and Gardens it is about a million dollars, and Ladies Home Journal about \$600,000.

Q. Now, in advertising in these magazines, let me ask you first, sir, if the figures you have just given us are an annual rate of expenditure? A. Yes. Well, they are for the advertising year. When you start using a national magazine, you are entitled to establish a year from the date that you first start to use the magazine. This year may not fit your corporate year, or the calendar year.

Q. When you commence paying, do you pay at the full list price? A. Yes.

Q. If at the end of the year you have advertised sufficiently so that earlier in the year prior to paying you would have been entitled to a discount, is there any adjustment made? A. I am not familiar with the detail of the billing practices, Mr. Tincher, but you would normally, if for instance we contracted in Life for three ads, we would pay the rate that would be demanded by those three ads, but if during that year three or four months later we decided to run 25 ads in Life,

(Tr. p. 1782)

we would get a retroactive discount covering the original three, if it came within the advertising year.

Q. Now, of these three magazines that you have mentioned, sir, Life, Better Homes and Gardens, and Ladies Home Journal, has your company earned the maximum, or has it earned any discount in its advertising? A. We have. Our expenditure in Life was to the order of \$70,000, and we did not earn a discount. In Ladies Home Journal we have earned about 4 percent discount. In Better Homes

Alan C. Stoneman—Direct

and Gardens we spent about \$68,000, and did not earn a discount.

* * * * *

(Tr. p. 1784)

* * * * *

By Mr. Tinch:

Q. Now, returning to television, Mr. Stoneman, is there any difference in television advertising cost to an advertiser having several products to advertise, and an advertiser having only one product to advertise?

(Tr. p. 1785)

* * * * *

A. Yes, multi-products are an advantage in television advertising.

You might use as a simple illustration a company with one product that could afford the cost of one program, versus the company with three products that could afford the cost of three programs.

In the case of the company with three products, they could put each product on each program, if it were a 30-minute program, and thereby, for the same expenditure on that product, buy probably twice the audience that you could buy if you were limited to one program.

I say twice the audience, because I am assuming there would be a 50-percent overlap between the three programs.

* * * * *

Hearing Examiner Haycraft: Take your products, so that we can understand your experience.

The Witness: Well, we have never been able to afford over one program, your Honor, but if I had product A, and I bought television program from seven to seven-thirty, I would have three advertising opportunities in that program—the

Alan C. Stoneman—Direct

(Tr. p. 1786)

beginning of the program, the middle of the program, and the end of the program.

So, I would be advertising my product A to that same audience three times.

But now, assume that I had product A, B, and C; I buy three programs, and I buy these contiguous, which wouldn't make too much sense, but let us assume I would do it. I buy the program from seven to seven-thirty, eight to eight-thirty—seven to seven-thirty, seven-thirty to eight, and eight to eight-thirty.

I would now have nine opportunities to advertise, but instead of putting product A in the first three spots, I would put it in the first one, I would put product B in the second, and C in the third.

I could put A in the fourth, and B in the fifth, and C in the sixth, and A in the seventh, and B in the eighth, and C in the ninth.

• • • • •
(Tr. p. 1791)

• • • • •

By Mr. Tincher:

Q. Now, would you tell us, Mr. Stoneman, what the relationship is in value between a 60-second television spot, and a 60-second commercial on a television program?

• • • • •

A. Well, a 60-second television spot normally is not purchased; however, it is less valuable than a 60-second television commercial identified with a program, because, in the case of a 60-second commercial tied in with the program, you get the additional value of identification with the program; whereas, in the case of a spot, you are running into station breaks, you are running into people

Alan C. Stoneman—Direct

flipping the dial of their television set seeking another program, and a 60-second spot

(Tr. p. 1792)

is not regarded as being as valuable as a 60-second commercial tied in with a program.

(Tr. p. 1797)

Q. All right, sir. Now, in purchasing a regional food index from the Nielsen Company, does the Nielsen Company have standard zones or regions that you purchase, or may you order a specific zone that you want covered from Nielsen?

The Witness: No.

The Witness: No, you must buy the zone that is available. That is the standard Nielsen zone. Nielsen

(Tr. p. 1798)

divided the country into a number of zones, a total of all zones makes up the national panel.

(Tr. p. 1800)

Hearing Examiner Haycraft: Have you ever grouped other products with the bleaches in a promotional scheme?

The Witness: No, not recently.

I am answering this limited to a combination offer of sale of two products at the retail level; is that correct?

Mr. Tincher: Well, not necessarily two products.

Hearing Examiner Haycraft: That is the way you understand it?

The Witness: That is what I understand.

Alan C. Stoneman—Direct

Hearing Examiner Haycraft: Bleaches, liquid bleaches, and other products?

The Witness: That is right.

We have not offered combination sales.

By Mr. Tincher:

Q. Well, just to make sure we understand each other, sir, Mr. Stoneman, I believe the first day you were here, you were asked to obtain some information about a contest that your company had conducted.

Have you been able to obtain that information as to whether liquid bleach was included in the products advertised in that contest?

A. Yes, it was.

(Tr. p. 1803)

Q. But I would like to ask this one question now, which has nothing to do directly with the record when it does come in, I don't believe. And so, Mr. Stoneman, if I may, sir, my question is, what did you mean at record 1576 when you said that the Purex test in Erie, Pennsylvania, was neutralized?

The Witness: I meant that the test was cancelled out. We made the test for a particular purpose, the purpose being to accumulate users of a new product in a limited area in a short period of time, not only to accumulate a few users, but to accumulate enough users so that researchers could go into the market and make a meaningful survey, if they simply picked housewives at random, because the Purex market share did not remain at a reasonably good level for but a very short period of time, and because the first purchasers did not, very few of them repeated on their purchasing, as shown by the market share.

Alan C. Stoneman—Direct

It is not possible to do the piece of research that we anticipated and get meaningful results.

(Tr. p. 1810)

By Mr. Tincher:

Q. Mr. Stoneman, would you tell us how much of Purex's Old Dutch Cleanser is sold in drug stores as compared to grocery stores?

A. Five percent; approximately five percent.

(Tr. p. 1811)

Q. Can you tell us the dollar volume of powdered cleanser business, the total market in 1956, and also in 1957?

A. The total market of friction cleansers, both in 1956 and 1957, this is at the manufacturer's price, not at retail prices, is approximately \$55 million.

(Tr. p. 1812)

Q. Mr. Stoneman, are the basic competitive problems in selling household liquid bleach any different than the basic competitive problems in selling powdered cleansers?

The Witness: No.

(Tr. p. 1814)

Q. Mr. Stoneman, my last question to you, sir, is to ask you if you are familiar with the fact that the Procter &

Proceedings

Gamble Company acquired the Clorox Chemical Company in August of 1957? A. Yes.

Q. Will you tell us, please, Mr. Stoneman, what effect, if any, this acquisition will have on the liquid bleach business of the Purex Corporation, Ltd.?

* * * * *

The Witness: The acquisition of Clorox by Procter & Gamble, in our opinion, will have a serious effect upon Purex's business, and Purex's ability to compete in the liquid bleach business, particularly if the same promotion devices which are normally used by Procter & Gamble are applied to the liquid bleach business.

* * * * *

(Tr. p. 1827)

* * * * *

Room 229,
Federal Building,
Los Angeles, California.

April 30, 1958.

Met, pursuant to adjournment, at 1:00 p.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 1829)

PROCEEDINGS

* * * * *

(Tr. p. 1830)

* * * * *

Mr. Royall: 447.

Your Honor, we agree that all figures in 447, except those for spot TV are correctly copied from CX 448, which

Proceedings

is a volume entitled "National Advertising Investments," Volume 9, No. 2, January-December, 1957.

We do not admit that the spot TV figures are copied

(Tr. p. 1831)

from that.

Hearing Examiner Haycraft: Do you recognize the Exhibit 448 for identification as an authoritative source for such figures?

Mr. Royall: We think that the Exhibit 448 is an authoritative source.

* * * * *

(Tr. p. 1834)

* * * * *

Hearing Examiner Haycraft: It seems to me the situation there is that all Commission's Exhibit 447 except the figures with respect to TV Spot, that there is no objection, and they will be received in evidence, but as to that, it would be necessary for further testimony to be taken.

(The document referred to, heretofore marked for identification as Commission's Exhibit 447, was received in evidence.)

* * * * *

(Tr. p. 1837)

* * * * *

Mr. Tincher: All right, we will take that one, Commission's 450 for identification, is the Erie, Pennsylvania tabulation.

I might state for the record, sir, that there have been certain changes in ink made on Commission's Exhibit 450, and I am informed that these changes were arrived at as a result of meetings between Mr. Hanson, representing the Purex Company, and Mr. Larsen, for Procter & Gamble.

I will show that to them, and see if that is correct.

Proceedings

(Tr. p. 1838)

Mr. Royall: I think that is a misapprehension on the part of Mr. Tincher. I understand that we did not agree to any changes on it. There were some—

Mr. Tincher: What I meant was, it was my understanding, this is just hearsay to me, that you did find some things that needed correcting.

Mr. Royall: Yes, sir, I think there were some errors in it and there were some of them that were apparently corrected, but I think your inquiry is as to the authentication of it, is that correct?

Mr. Tincher: That is as corrected, yes.

Mr. Royall: As corrected.

Would your Honor give us a second to see the changes?

* * * * *

Hearing Examiner Haycraft: I would like to have a copy of the exhibit, if you can spare me one, so I can follow you.

Mr. Royall: I will give you the new one. I will

(Tr. p. 1839)

have to look at it again. That is the one just given to me. I haven't read it.

Here is a copy of the one they covered, I should like you to see also, but for this purpose the first column across the page headed Shares of Total Liquid Bleach Market is a correct copy of the M. A. Wallach Research Corporation, some name like that.

Mr. Tincher: M. A. Wallach Research, Inc.

Mr. Royall: Research, Inc. The second column which deals with the average price per unit as headed here also was derived from that source.

The column entitled Merchandising in Stores, this is the seventh column down, from Wallach.

Proceedings

They were correctly copied from the Wallach with certain errors which I assume have been corrected?

* * * * *

Neither Counsel nor our client have been able to find sufficiently about Mr. Wallach to make a statement that would qualify him.

(Tr. p. 1840)

However, for this particular occasion and not to bind ourselves for the future, we make no objection to those three columns on the ground of disqualification of Mr. Wallach as an expert or experienced researcher.

Your Honor, may I look at that one a second to see if the changes, the errors on there, I want to see if they are corrected.

* * * * *

Mr. Royall: And the fourth, advertising schedule, two advertising schedules, and the one coupon, were prepared by Foote, Cohn & Belden, that is, the basic data was. There were very many mistakes in the take-off from the Foote, Cohn & Belden document, and I would have to look at it a little more carefully to say immediately that it was changed. There must be ten or fifteen or twenty. However, we do not make any point that Foote, Cohn & Belden is not qualified in this matter.

Mr. Tincher: Mr. Examiner, Mr. Royall is correct and there is one simple reason for all the amount of mistakes.

(Tr. p. 1841)

We can have the witness testify, or I can tell you, whichever you prefer.

Hearing Examiner Haycraft: You had better have the witness testify.

Mr. Tincher: All right, sir.

Mr. Royall: But we will compare those, Your Honor, and if satisfactory, we will put in the record that it has

Proceedings

now been corrected and if we find otherwise before tomorrow morning, we will ask Your Honor to permit us to do so so we won't hold up the trial.

Now that leaves open the situation of the sixth, I believe it is the sixth horizontal column, price per unit in stores.

The chart indicates that that was obtained by telephone call from a Purex salesman. All we know about him is his name.

We have not been furnished any figures that would enable us to check the accuracy of these figures, and comparison with the only source we have of Clorox does not indicate that we can agree to the accuracy of the figures that column has.

Mr. Tinch: May I inquire, Mr. Royall, is it merely the Clorox prices that you can't agree on, or all the prices?

Mr. Royall: The only ones we could check were the Clorox ones. We were not given any data as I am informed

(Tr. p. 1842)

enabling us to check the Purex one, though we would like to have had it.

Hearing Examiner Haycraft: Is that all that remains of the exhibit?

Mr. Royall: No, sir, there is one more.

Now, Your Honor, we were permitted to go to the Purex records on the last column or two columns, it looks like it might be denominated either Purex Factory List and Clorox Factory List, and we find they are correct.

* * * * *

(Tr. p. 1845)

* * * * *

Mr. Royall: Now, Your Honor, as to this copy here, this Exhibit 450, which was offered and which is now, has had certain changes made in it, we would like to request

Alan C. Stoneman—Direct

that both of them be in the record to the extent they are admitted.

Hearing Examiner Haycraft: What do you mean, both?

Mr. Royall: Both the one they prepared first, and the one that was prepared second.

Hearing Examiner Haycraft: No, I am going to let the corrected,—I don't want to see any; I will admit the corrected exhibit.

Mr. Royall: That is right.

* * * * *

(Tr. p. 1846)

* * * * *

Alan C. Stoneman

having been previously sworn, resumed the stand and testified further as follows:

DIRECT EXAMINATION (Continued)

By Mr. Tinch:

Q. Mr. Stoneman, let me hand you Commission's Exhibit 450, which has been struck, and I just want to ask you a few questions about it.

Hearing Examiner Haycraft: Now, wait a minute. Exhibit 450 has not been struck. 451 was struck.

* * * * *

By Mr. Tinch:

(Tr. p. 1847)

Q. Let me ask you, Mr. Stoneman, in the activities which are reported under the various horizontal columns are reported so as to be in the proper time period in the vertical columns? A. Yes.

Q. Now, I wonder if you could, for example, in the second horizontal column, average price per unit sold, vari-

Alan C. Stoneman—Direct

ous abbreviations appear there; I wonder if you would state for the record what the abbreviation is, and what it stands for? A. "Quart" is abbreviated "Qt"; the abbreviation one-half, the fraction means half-gallon; the abbreviation "G" means Gallon.

Q. And are the various figures which are reported in cents, sir? A. Yes, the figures reported in cents are the retail prices reported by Wallach.

* * * * *

(Tr. p. 1848)

Q. All right, sir, and in the horizontal column entitled "Merchandising in Stores," would you please explain what the abbreviation "Dist." stands for? A. The abbreviation "Dist." in the horizontal column captioned "Merchandising in Stores" means distribution.

Q. All right. Now, Commission's Exhibit 450 that you are holding, under the horizontal column "Couponing" has various incorrect notations, will you tell us, if you can, the reason for the error in that column which has been corrected? A. Yes. The original figure of 80,000 which was struck and replaced by a figure of 68,208, was an estimated figure of the number of coupons that would be mailed in Erie. The 68,208 was the actual count of the number of coupons that were mailed according to Reuben H. Donnelley's mailing list for Erie County.

Q. Were the original computations based upon the original 80,000 estimate, or on the actual mailing? A. No, I think the original, I think the computations were taken from the invoicing and coupon redemption. The coupon cost here includes the coupon mailing as well as the coupon redemption.

Q. All right, sir. In that same horizontal column on couponing, is the redemption of coupons, the percent that

Alan C. Stoneman—Direct

is indicated there, is that when they were returned to the Purex Corporation, Ltd., or returned to the retail grocer by the

(Tr. p. 1849)

consumer? A. This is the redemption of coupons in this column under couponing is shown in the vertical column opposite the vertical column which carries the date that we paid the retailer for the coupons; when we redeemed them, not when the housewife turned them in at the retail store.

(Tr. p. 1851)

Q. Well, let me direct your attention to advertising schedule—Clorox. You notice, in advertising schedule Clorox, you will notice at the end of "Total Advertising" in both ends, there are arrows indicating the time period covered. Why, I am asking you now on Purex what the beginning of the total advertising, which is given there?

The Witness: To summarize, the total advertising schedule for Purex began on 10/14, and ended on 3/31. That is,

(Tr. p. 1852)

10/14/57, and 3/31/58.

Hearing Examiner Haycraft: I would like some comments on the corrections made on your TV spot announcements there.

Mr. Tincer: Yes, I think the document speaks for itself. I don't recall exactly.

The Witness: With respect to these corrections on spot announcements, your Honor, when a program of this sort

Alan C. Stoneman—Direct

is set up, there is normally a time lag between the estimate of what you will spend in the market and the commitment. So, the advertising agency would normally seek vacancies, or seek availabilities, and would present a budget on the basis of a budget for the test market. But if there is a time lag between the time they seek availability, and the time of approval, and they go out to place an order, they may find now that they cannot place the spot in exactly the same time period that was contemplated, and they are given considerable latitude to shift, as long as it does not change the overall picture, or the overall effect, and that is the reason for these corrections.

One was the estimate of when the spots would be

(Tr. p. 1853)

run, and the other is the actual.

Hearing Examiner Haycraft: By the other, you mean the penned corrections?

The Witness: The pen corrections are the actual.

By Mr. Tinch:

Q. Then I would ask you the same question, sir, with respect to the changes made in the newspaper advertising.

* * * *

A. Well, this is a shift in the advertising schedule and, as I see it, if you will give me a second to add them up, there is 14, 20, 26, 30, versus 10, 20, 26; there was a reduction there of six ads from the contemplated original program. I do not know offhand what the reason for that is.

By Mr. Tinch:

Q. All right, sir, but do you know that the inked figures are the correct figures of what was actually run? A. Yes.

* * * *

Alan C. Stoneman—Direct

(Tr. p. 1854)

Q. I notice in the column entitled, "Merchandising in Stores," there has been an inked correction in the vertical column, 16-23, stating ironing board cover offer, 36 percent distribution.

I wonder if you could explain to us the reason for that correction? A. Well, this apparently was a posting from the Wallach Reports which was not made, and was picked up on the second review. This is an addition that indicates that the ironing board cover offer, this is in the Clorox column, is a premium by Clorox appeared on the market in early January, rather than in early February, as was originally reported.

Q. All right, sir; then I notice in the couponing horizontal column, there is an inked correction for the month of March on the cumulative redemption of coupons. Let me ask you if you know the reason for that correction? A. That was an error in posting.

(Tr. p. 1861).

Hearing Examiner Haycraft: This is the physical exhibit that I have in my hand here, you better get it stamped

(Tr. p. 1862)

up and run a penned "X-wise" through this that has not been received.

(The document above referred to, heretofore marked Commission's Exhibit 450 for identification, was received in evidence.)

(Tr. p. 1867)

Alan C. Stoneman—Direct

By Mr. Tincher:

Q. And on page 1521, sir, I will refer you to line 4, and on all these I am giving you, my question is, if there is any correction, addition or explanation that needs to be given.

A. The sentence which includes line 4 on page 1521 reads that: "It also manufactures Drano, which is a bowl cleaner which is distributed regionally in the West." That should read: "It also manufactures Purex drain opener and a bowl

(Tr. p. 1868)

cleaner which is distributed regionally in the West."

Q. All right, sir. And to page 1523, line 7, and in answer to your response, sir, my question is not just anything wrong, if there is anything that needs to be explained or added.

A. Well, line 7 is incomplete in that New Orleans, Louisiana, should be added as a liquid bleach point of production.

(Tr. p. 1871)

Q. Mr. Stoneman, you were asked on page 1578 to check when were the last times you had used price reducing coupons to the consumer; do you have that information?

A. May I refer to the page?

Q. Yes, it is page 1578, line 21. A. Yes, the two recent uses of price reducing coupons were in Erie, Pennsylvania, in 1957; San Antonio, Texas, in 1954.

Q. And, do you know how many coupons were used in the Texas area, sir? A. 250,000.

(Tr. p. 1878)

Alan C. Stoneman—Direct

By Mr. Tincher:

Q. Let me ask you, sir, you were talking the other day, you may recall, about freight cost and glass cost, and you gave certain percentages.

Let me ask you if those percentages are percentages of the selling price, or of the selling cost of the liquid bleach?

A. They are the percentages of the selling price.

Hearing Examiner Haycraft: Which ones were those? We don't want to hunt in the record.

Mr. Tincher: That, sir, was Page 1673, on two occasions, Lines 12 and—

Hearing Examiner Haycraft: What were the percentages he gave?

What were the percentages you gave, do you remember?

The Witness: They were 14 percent, approximate percentages were 14 and 40, and the accurate percentages were 38 and 14, and 14.33, I believe.

Hearing Examiner Haycraft: That is all the selling price?

The Witness: Yes.

By Mr. Tincher:

Q. All right, sir; then you testified the other day

(Tr. p. 1879)

concerning Old Dutch Cleanser having a bleaching agent in it prior to Comet.

Let me ask you if Old Dutch Cleanser was the first product of any kind to have a bleach agent, or the first scouring cleanser to have a bleaching agent?

A. The first scouring cleanser.

Alan C. Stoneman—Cross

(Tr. p. 1881)

CROSS EXAMINATION

By Mr. Royall:

(Tr. p. 1902)

Q. Now, Mr. Stoneman, you gave testimony about your television network programs. I will ask you if all or part of those have not been cancelled and whether it's all or part?

(Tr. p. 1903)

A. Those programs have finished, yes.

Q. Are they over? A. You can buy a television—yes—you buy a television for a certain period and they have run their course.

Q. They have run their course, and you have substituted other forms of advertising for them, haven't you? A. That's correct.

Q. Mr. Stoneman, in your testimony you were asked about the new bottle, or new bottle or the new bottle handle on Purex bleach. That was a pioneer venture you worked out with the glass company, wasn't it? A. That's right.

Q. What company? A. That's Latchford Marble.

(Tr. p. 1904)

Q. In connection with the use of sampling for the sale of liquid bleach, is it not a fact that weight and breakage are factors militating against the sampling of it? A. Yes.

Alan C. Stoneman—Cross

Q. Are you familiar with the Nancy Sasser purchase price refund promotion? A. Yes, we've used it and I believe in 1953.

Q. Since then? A. Not that I know of.

Q. That was a sampling operation, wasn't it? A. Yes, a very small one.

Q. Mr. Stoneman, did Purex recently advertise the following, "a special ingredient has been added to provide even penetration, faster cleaning action?"

* * * * *

(Tr. p. 1905)

* * * * *

A. Yes.

By Mr. Royall:

Q. Now, do you know about when this was put out?

A. Yes. This is a brochure that was prepared for the Erie program, Erie introduction.

Q. Now, in that same program—and I show it to you—did not you work out a system for suggested retail price?

A. Yes.

* * * * *

(Tr. p. 1909)

* * * * *

Q. Now, I believe you testified that, beginning in October, 1956, you shifted to a direct sales force in bleach; is that right? A. That's correct.

Q. I will ask you if from that date until the date of this merger, which is in question in this case—

Hearing Examiner Haycraft: August, '57.

By Mr. Royall:

(Tr. p. 1910)

Q. August 1, '57, if your market share on Nielsen didn't drop from 15.2 to 14.7?

* * * * *

Alan C. Stoneman—Cross

A. Our market share on liquid bleach, our rate of growth, I will state that a little differently, our rate of growth on liquid bleach has been less than the rate of growth of the total bleach market over the period of the last four or five years.

However, the exact amount of any market deterioration that Purex suffered between October and August, I don't have on the tip of my tongue. I would be glad to supply it.

Mr. Royall: I want to make it clear that I was speaking of the percentage of the liquid bleach market, and does that help you any in your answer?

The Witness: No. We have a number of products, and a number of reports. I don't attempt to remember them all.

* * * * *

(Tr. p. 1917)

* * * * *

Q. Did you testify before the Federal Trade Commission on October 24, 1952, at Los Angeles, California?

* * * * *

(Tr. p. 1918)

* * * * *

Hearing Examiner Haycraft:

* * * * *

Incidentally, I take official notice, of course, that that was a proceeding entirely foreign, on different grounds. I just don't see where you could possibly tie the two together.

By Mr. Royall:

Q. Mr. Stoneman, did you not in 1952, in October, 1952, testify under oath the following:

"Question: I take it that the competition that your respondent company has had to meet is more or less on a price basis, is that correct, Mr. Stoneman?"

Alan C. Stoneman—Cross

"Answer: Yes.

"Question: Purely and simply price; quality of product is not an item?

"Answer: No. Price is the most important factor."

Mr. Tincher: I object to the question; it refers to past periods, periods prior to 1952.

Mr. Royall: No, it did not.

(Tr. p. 1919)

* * * * *

Hearing Examiner Haycraft: What direct testimony is that supposed to attack? What are you contradicting?

Mr. Royall: Well, he gave a lot of factors, Your Honor. I can point it out to you, of course.

Hearing Examiner Haycraft: I sustained the objection.

Mr. Royall: You sustain the objection?

Hearing Examiner Haycraft: Yes.

Mr. Royall: All right.

Hearing Examiner Haycraft: Not proper cross examination, too remote a period of time.

By Mr. Royall:

Q. I will ask you if you didn't also at that same period testify under oath that the most important thing to the housewife is price?

Mr. Tincher: Object, sir.

Hearing Examiner Haycraft: Sustained.

By Mr. Royall:

Q. I will ask you, sir, if you didn't testify under oath in October, 1952, speaking of Purex liquid bleach: "We compete with local brands more frequently than we compete

(Tr. p. 1920)

with Clorox"?

Mr. Tincher: I object, sir.

803a

Proceedings

Hearing Examiner Haycraft: Sustained.

By Mr. Royall:

Q. I will ask you if you didn't testify under oath in October, 1952, that there are "300 bleach manufacturers in the United States"?

Mr. Tincher: Object, sir.

Hearing Examiner Haycraft: Sustained.

* * * * *
(Tr. p. 1923)

* * * * *
Room 229,
Federal Building,
Los Angeles, California.

Thursday, May 1, 1958.

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *
(Tr. p. 1926)

PROCEEDINGS

* * * * *
Mr. Royall: Yes, sir, I do, and I would like very much to ask Mr. Tincher's attention to it because this comes to me from Mr. Larsen and Mr. Watkins, and I want to be sure that we have no misunderstanding about it.

The Counsel met yesterday afternoon with the Government Counsel and Purex Attorneys and in general an understanding was reached about certain of the matters.

* * * * *
We have been advised that it is impossible to determine from the Purex records the selling cost applicable to liquid

Proceedings

bleach here as sold through brokers or through direct salesmen.

They also advise that records do not show allocation of cost to liquid bleach, which is part of the same thing.

We understand that Purex has attempted to make this

(Tr. p. 1927)

allocation and has found it impossible. That's what we are advised, and it is doubtful if even a complete audit would give you the facts.

* * * * *

Hearing Examiner Haycraft: It depends on whether or not you are willing to accept those statements off the record or whether you want the gentlemen who advised you that to make the statement under oath on the witness stand.

Mr. Royall: What I thought, Your Honor, is——

Hearing Examiner Haycraft: If you are satisfied and willing to stipulate that that is the case.

Mr. Royall: I am satisfied unless there is some misunderstanding with counsel for the other side. If both counsel say that, I don't want any witness. I mean, I would not seek on cross examination on that, because I don't know enough about it and I have no reason to at this time think that there is anything except a correct statement about it. We have nothing to the contrary.

As to the private label bleach sales, Mr. Evans will meet with our accountant here at 2:00 o'clock, as I understand, with a summary of those sales, and the accountant will go over them with him and will look into, among other things, the allocations and systems used.

It seems to me possible that that conference might.

(Tr. p. 1928)

solve the situation, but we don't, can't definitely know until that time.

Alan C. Stoneman—Cross

Now, Mr. Tincher, does that differ in any way from the facts as you understand them?

Mr. Tincher: No, sir. It is basically correct.

* * * * *

(Tr. p. 1930)

* * * * *

Mr. Royall: I am not trying to argue this thing, Your Honor. I'm just trying to state the facts.

Third, we asked for reports, surveys, records, all other documents and memorandum supporting testimony that a multiple product line enables a manufacturer to obtain more shelf space in retail outlets.

We were informed they do not have such records.

* * * * *

(Tr. p. 1934)

* * * * *

Alan C. Stoneman

resumed the stand and testified further as follows:

CROSS EXAMINATION (cont.)

* * * * *

By Mr. Royall:

* * * * *

(Tr. p. 1935)

* * * * *

Q: I believe you testified also that the couponing for your Erie promotion was handled by Reuben Donnelly, is that correct? A. Yes.

Q. That is an independent organization? A. Yes.

Q. Its services are available to any company that they desire to deal with, is that correct? A. That's correct.

Alan C. Stoneman—Cross

Q. Does it sometimes represent a number of companies in a joint coupon venture? A. Yes, it does.

* * * * *

(Tr. p. 1936)

* * * * *

Q. And now give me Exhibit 443.

Now, these figures of net sales appearing on Exhibit 443, are you familiar with that? A. I don't recall it exactly.

Q. Let me give it to you, because I couldn't remember exactly the form of it, myself. A. Yes.

Q. Now, that does not include any private bleach or industrial bleach, does it? A. No.

* * * * *

(Tr. p. 1937)

Q. Those figures are after the deduction of quantity and other discounts for stock protection and special promotional allowances, are they not? A. Yes.

* * * * *

Q. Do you have any schedule of quantity discounts for liquid bleach alone? A. Yes.

Q. Can you make that available to us with little difficulty? A. Yes, I can tell you. I think I can give it to you from memory.

We have a 2 percent for carload or truckload, and 1 percent for half carload or truckload. That is depending upon the territory and the regulations that govern truck shipments. The truckload varies from 900 cases to as low as 500 cases, and, hence, a half truckload or carload varies from 450 to 250.

Q. Now, Mr. Stoneman, don't answer this question until his Honor has ruled on it.

Yesterday, I asked you if you were either planning to,

Alan C. Stoneman—Cross

(Tr. p. 1938)

or were about to, change your 6-cent allowance, and the Court excluded that testimony.

I now ask you if it wasn't changed as of today?

* * * * *

A. Is your question directed toward a specific area, or is it directed toward the national?

By Mr. Royall:

Q. Will you give me the area, sir, while you are answering the question? I don't know.*

Hearing Examiner Haycraft: He started to answer yesterday, I remember, in some area. I am not going—or, I am going to let him answer, because apparently, there may be some further testimony developed by Respondent on that, and I think I would rather have the facts as to what they might be, than some conjecture as to what they are.

A. In the San Francisco territory, I am not sure of the date, but it is at least a very recent one, within the last two weeks, we withdrew the 6 cents per case promotional

(Tr. p. 1939)

allowance, and substituted a 10-cent-per case cooperative advertising allowance that had formerly been in effect up to some point in 1956, I think it was, the spring of '56.

The present allowance requires proof of advertising for payment, whereas, the previous allowance did not require such proof.

* * * * *

(Tr. p. 1940)

* * * * *

By Mr. Royall:

Q. The effect of changing from the system that you have been following to the 10-cent system has a net effect

Alan C. Stoneman—Cross

of increasing your price in the territory to which it is applicable, does it not? A. It is not necessarily true.

Mr. Tincher: I object.

Hearing Examiner Haycraft: Overruled. He may answer.

By Mr. Royall:

Q. And that would be shown by records, would it not?

A. Those records might be very difficult to get. If you

(Tr. p. 1941)

have a 6-cent allowance that is paid to direct buyers, your cost is 6 cents per case on those cases that are sold to direct buyers. If you have a 10-cent allowance that is paid on proof of advertising, your cost is that percent of the cases that you sell and which you get proof of advertising.

Now, if 60 percent of the cases supplied you with proof of advertising, obviously your cost would be the same.

(Tr. p. 1944)

Q. Mr. Stoneman, who prepared this exhibit? A. That exhibit was prepared by our Market Research Department.

(Tr. p. 1945)

Q. Did Mr. Wallach prepare this exhibit? A. I don't know. No, he didn't prepare that exhibit. You mean did Mr. Wallach prepare the information that he sent to us? I don't know.

(Tr. p. 1951)

Alan C. Stoneman—Cross

By Mr. Royall:

Q. You said he made reports for other places; what were they?

(Tr. p. 1952)

Mr. Tincher: Object, sir. It is beyond the scope—
Hearing Examiner Haycraft: Sustained.

By Mr. Royall:

Q. Did he make one on Evansville?

Mr. Tincher: Object, sir.

Hearing Examiner Haycraft: Sustained.

Mr. Royall: Your Honor, may I state the purpose of that?

Hearing Examiner Haycraft: Well, I don't know; it was not gone into on direct examination with this witness on Evansville. This exhibit does not purport to cover Evansville. There is no exhibit in here on Evansville.

* * * * *

Mr. Royall: Your Honor, they asked him on Evansville on direct examination.

(Tr. p. 1953)

Hearing Examiner Haycraft: They asked him about a lot of other things, but no exhibit was presented on Evansville. That is the thing to be determined here now.

Mr. Royall: Apparently, we differ on it, but I do like to give you my point of view. I do not conceive that direct examination is a complete confine of cross examination.

Hearing Examiner Haycraft: That is my ruling, and always has been, Mr. Royall.

Mr. Royall: Yes, I understand.

Hearing Examiner Haycraft: In order to keep the record down within some reasonable size. I always give counsel for the respondent an opportunity to present their

Alan C. Stoneman—Cross

defense in an orderly manner, the same as I do counsel in support of the complaint, but I do not let them mix it up, so far as I can. Of course, I got myself in a boat a while ago when I allowed a question I originally sustained the objection to. That is just an illustration of what I would be doing if I used more liberal rules of cross examination. The first thing you know, you would have your case in, and the Commission would not have theirs—

* * * * *

(Tr. p. 1954)

* * * * *

Q. Now, Mr. Stoneman, how many other bleach brands were sold in Erie, Pennsylvania, during this period? A. I don't know.

Q. You know that there were others, do you not? A. Yes. Our study covered 101, Clorox, Purex, and then all other brands were thrown in a single category.

Q. You do not know the names of any of those?

* * * * *

The Witness: No.

* * * * *

(Tr. p. 1971)

* * * * *

By Mr. Royall:

* * * * *

Q. Let's put it this way. You did start Beads O'Bleach between '52 and '57, didn't you? A. Yes.

Q. What is that product? A. That's a dry chlorine bleach.

* * * * *

(Tr. p. 1984)

* * * * *

Alan C. Stoneman—Cross

Mr. Tincher: Mr. Examiner, while we are talking so much about the Purex case, will you take official notice that the complaint in that case was dismissed?

Hearing Examiner Haycraft: I, of course, can, but I don't see what relevancy that is to this case.

Let me make clear, Mr. Tincher, that the only reason that any reference is being made to that case at all, as I indicated yesterday, is that this witness, if he testified in that case to the same facts that he testified to in this case, ostensibly the same facts, purportedly the same facts, then counsel for the respondent is entitled to call his attention to those, that other testimony, if it is contradictory to the testimony he has given in this case, for the purpose of impeachment, but that is as far as he can go.

That is as far as I am going to allow any reference on that case. I want no further examination on Mr. Sharp.

* * * * *

(Tr. p. 1988)

* * * * *

Q. Now, Mr. Stoneman, is it not true that the price of Purex is higher than the price of Clorox, not only in the Erie situation that you testified about, but in Louisville, San Francisco, southern Oregon, and perhaps others?

Hearing Examiner Haycraft: You mean the retail price, or the wholesale?

Mr. Royall: The price at which the Purex Company sells. A. Currently, no; it is not true. The price of Purex was

(Tr. p. 1989)

a little higher in Erie and in either Louisville or Evansville; I am not sure which, for a short term during a market test.

Alan C. Stoneman—Cross

The price of Purex was higher in the Bay area; that is, San Francisco, in certain other territories served by our San Leandro plant, for a short term, during this year.

I would have to refresh my memory to get the exact dates that was. That term did not extend over ninety days, however, and the present price in the Bay area is just the same as the price of Clorox, as well as in all territories served by the San Leandro plant, at the present time.

I think maybe the information you have is out of date as of now, as of today.

* * * * *

(Tr. p. 2010)

* * * * *

Q. Mr. Stoneman, I believe you have already testified, have you not, that the private label bleaches sold at somewhat lower prices than the Purex bleach? A. Yes.

Q. And, therefore, a percentage on the comparison of the units, rather than a comparison of the dollars, would result in a slightly higher percentage of the private labels bleach, would it not? A. Well, you—

Hearing Examiner Haycraft: Your total business.

A. (continuing) The comparison given was the percent of the dollars to the total dollars of sales, so you cannot compare the percentage of units of private labels to the total units of sales, because now you are comparing peanuts and apples.

By Mr. Royall:

Q. Yes, sir, but you can compare the total units of private label bleach with the total units of Purex bleach, can't you?

* * * * *

A. Yes.

Alan C. Stoneman—Cross

By Mr. Royall:

Q. You do have those unit figures, because you testified

(Tr. p. 2011)

as to the difference in market share, whether you figured one way or the other, didn't you? A. That's right.

Q. Yes. Now, we ask for those.

Hearing Examiner Haycraft: His question, Mr. Stoneman, is whether or not if you figured that percentage of your private brands business on a unit basis would be a higher percentage than on a dollar basis.

The Witness: That's correct.

Hearing Examiner Haycraft: Do you have any idea of how much higher; do you have a figure on that?

The Witness: Well, instead of being on the order of 1½ percent, it would be on the order of about 1.8 percent. That is an estimate, your Honor.

* * * * *

(Tr. p. 2012)

* * * * *

Mr. Royall: It has been suggested off the record, your Honor, that that would increase the ratio from 1.5 to somewhere between 1.8 and 2 percent. We will not, under those circumstances, ask for the figures, because we wanted them only for the purpose of getting that determination.

Hearing Examiner Haycraft: All right.

Mr. Tincher: May the record show I agree with counsel's statement?

* * * * *

(Tr. p. 2015)

* * * * *

Alan C. Stoneman—Redirect

REDIRECT EXAMINATION

By Mr. Tincher:

Q. You testified yesterday afternoon your TV program schedule had finished.

Would you tell us what media you are using now in place of TV? **A.** We are using magazine advertising, some newspaper, some

(Tr. p. 2016).

radio spots in limited areas.

Q. Would you tell us why you did not continue the TV program when it finished?

* * * * *

A. We discontinued the TV program because we had spent all the money that was budgeted for the current fiscal year, and allocated to TV.

By Mr. Tincher:

* * * * *

Q. Now, I think you will recall, Mr. Stoneman, that Mr. Royall asked you if you were familiar with a drop in market

(Tr. p. 2017)

share as reported in Nielsen from 1952 to 1957 of the Purex Corporation.

Do you recall that? **A.** Yes.

Q. And, also, a similar drop subsequent to October, 1956 until August of 1957.

Do you recall that? **A.** Yes.

Q. Now, have you had a chance to check Nielsen to see if the percentages given you in the question, the market share percentages, were correct? **A.** I have picked up some additional data on Nielsen which I have before me with respect to our market share, Purex's market share,

Alan C. Stoneman—Redirect

in relationship to the total market. This data is not tabulated on the same—for the same periods as the data that Mr. Royall showed me.

* * * * *

The Nielsen data is from June 1st to May 31st, whereas, our fiscal year is from July 1st to June 30th, Nielsen being compiled on a two-month basis, and those two

(Tr. p. 2018)

months not fitting our fiscal period, this is as close as we can get to a Nielsen compilation in relation to Purex's fiscal year.

* * * * *

Q. All right, sir. Now, let me ask you if your investigation of Nielsen does indicate a decrease in market share for the Purex Corporation on liquid bleach from 1952 to August 1 of 1957? A. Not for all periods. Specifically using the period June-July, 1952 to April-May, 1953 as a base period, the following percentage change occurred for the brand Purex liquid bleach; from June-July, 1952, April-May, 1953 to June-July, 1953, April-May, 1954, a loss of 4.6 percent.

During this period, the total market expanded 2.7 percent.

* * * * *

(Tr. p. 2019)

* * * * *

Q. Now, the period you have just mentioned, sir, was this prior to acquisitions as described by Mr. Royall in his questioning to you yesterday? A. Yes, this was prior to any acquisition of a new product by Purex.

Q. Was this prior to the change from broker system of selling to direct salesmen? A. Yes.

Alan C. Stoneman—Redirect

Q. Now, let me ask you if your research of Nielsen will indicate whether there has been any change in market share subsequent to changing from the broker system to direct salesman system?

A. Yes. The period, looking at a period, June-July 1955 to April-May of '56, which is the period just prior to the change to brokerage selling that occurred in October of '56, in comparing that period to the June-July, 1956, April-May, 1957 period, we find that the June-July '56 to April-May, 1957 period is the only period in the last five years where Purex's gain in market share equalled the gain in total market. As a matter of fact, it slightly exceeded it. Purex's increase was 4.8 percent, and the gain in the total market was 4.6 percent.

(Tr. p. 2020)

The Witness: This period includes—

—several months of direct selling.

(Tr. p. 2023)

By Mr. Tinch:

Q. Just one final area of inquiry, sir: You testified this morning concerning the 90-day period in the San Francisco Bay area where Purex was selling at a higher price than Clorox.

(Tr. p. 2024)

Now, do I understand correctly that that is not true today? A. Yes.

Q. Will you explain to use why during this 90-day period the Purex price was higher? A. I said that period was

Alan C. Stoneman—Redirect

about 90 days. I didn't check the exact dates on it; about 90 days, I think, is proper, is correct.

Purex increased the price of liquid bleach in the San Francisco Bay area coincidental with the introduction of its new package. This increase was a minor one; it was 6 cents on half gallons and 4 cents on gallons.

Q. Is that a case? A. Per case, case of half gallons, case of gallons.

We put this increase in effect because there were some extra costs in manufacturing the new product; however, our experience in the market and the tendency of the retailers to take a 2-cent mark-up at the retail—on the retail shelf as a result of the 1-cent per unit increase discouraged us from holding the price in effect and we withdrew the price just recently.

Q. Now, when you were speaking of 2 cents, was that the bottle or case? A. Two cents per unit.

Q. Two cents per bottle?

(Tr. p. 2025)

A. Yes, 6 cents per case on half gallons is 1 cent per unit, and 4 cents per case on gallons is 1 cent per unit. We hoped the retailer would only take a one-cent mark-up on each type, the half gallon and the gallon, but experience indicated that he took a bigger markup, and the sales were not satisfactory so we withdrew the price increase.

Q. This is one final, final thing. I would like to show you lines 3 through 6, sir, on page 1781 of the transcript.

* * * * *

(Tr. p. 2026)

* * * * *

Hearing Examiner Haycraft: Will you read the answer and then read what it should be?

Alan C. Stoneman—Redirect

The Witness: The answer is: "In Life it is about two million, I think it's 2,100,000 in Ladies Home Journal—in Better Homes and Gardens it's about a million, and Ladies Home Journal about 600,000."

The statement should have been, I think, Your Honor,—excuse me.

The statement should have been, in Ladies Home Journal and in Better Homes and Gardens it's about a million dollars, and the balance of the statement and Ladies Home Journal about 600,000 should be struck.

* * * * *

(Tr. p. 2027)

* * * * *

Hearing Examiner Haycraft:

* * * * *

I would like to have the witness explain why the change is made. In other words, did you consult some records?

The Witness: No.

Hearing Examiner Haycraft: Did you make a mistake in your testimony?

The Witness: I do not believe I have. This is not exactly what I said.

Hearing Examiner Haycraft: Yes, I am sorry to contradict you, it is exactly what you said because I listened very carefully. I read that transcript again yesterday.

The Witness: Well, my statement with respect to Ladies Home Journal, the amount 600,000, was in error or it, should be about a million dollars.

Hearing Examiner Haycraft: All right.

That is an illustration of a witness, a witness having a right to correct an erroneous statement in the record, whether it is his mistake or somebody else's. This happens to be his mistake. I was listening very carefully.

* * * * *

819a

Proceedings

(Tr. p. 2062)

* * * * *

Room 1310, 226 West Jackson
Chicago, Illinois

Wednesday, May 14, 1958

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 2063)

PROCEEDINGS

* * * * *

(Tr. p. 2064)

* * * * *

Mr. Royall: Yes. Since that time, Your Honor, Mr. Tincher and I have discussed the matter and had a little correspondence about it, which is not necessary to read, I think, in which he was unwilling for a stipulation to be made that it was merely market trend and therefore the matter resolved itself into whether we would stipulate whether or not it was, it could be considered a market share. This morning I presented to these gentlemen a suggested stipulation which with a few small changes which the attorney suggested, has been I understand agreed upon, and I want to put it in the record, but I'd like first to give you our feeling about it. Of course we realize that a stipulation along the lines I have just

(Tr. p. 2065)

mentioned would facilitate the progress of the plaintiff's case, or the complainant's case, and would on the other hand make it unnecessary to have a great deal of testimony as to the method of collecting this evidence, how

Proceedings

they arrived at it and so forth. Weighing these considerations we have decided that in order to avoid the delay incident to a lot of testimony as to detail and in aid of expedition of the case, we will take the step which certainly as a general rule is not desirable to facilitate the proof but we are so anxious for this case to move along we will propose a stipulation with the understanding that it will not be necessary to have testimony to cover the same ground which would possibly take a long time. We offer this stipulation in substitution for such testimony. As appears in the stipulation which I will read in a minute we have ascribed to Nielson really more weight or more credence, I won't say weight, the matter of weight is still a matter for the Court to decide, more credence than we think is appropriate. However, we have decided in favor of that course in order that this case will move. The stipulation reads as follows, Your Honor.

* * * * *

(Tr. p. 2066-A)

STIPULATION

The parties hereto stipulate that complainant has asserted and, on the conditions hereinafter set forth, the respondent does not contest, that Nielsen Food Index figures relating to liquid bleach for the period from January 1, 1952 until December 1957, represent as to retail grocery stores the actual quantities and dollar values of purchases and sales, the inventories and days supplies, the percentages of market share or movement, the store count and commodity distribution, the stock location and out-of-stock condition, the wholesale and retail prices, and two special reports and one advertising report, all as they relate to liquid bleach.

Salvatore Giachetti—Direct

It is agreed by the parties that the respondent consents hereto solely in the interest of expedition and without admission as to the materiality or relevancy of any part of the said Nielsen Food Indices which might be offered in evidence, and with the understanding and agreement that this stipulation does not commit the respondent to the accuracy or validity of any part of the Nielsen Food Index either in any other proceeding or generally, and that this stipulation is not to be offered in evidence or otherwise used outside this proceeding and is not to be used to reflect on any allegation in the answer herein or on any witness of respondent, who has testified or may tes-

(Tr. p. 2066-B)

tify as to his interpretation or use of the Nielsen Food Index or its effect.

* * * * *

(Tr. p. 2067)

* * * * *

Salvatore Giachetti

was thereupon called as a witness for the Commission, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Deveny:

Q. State your name and address for the record. A. Salvatore Giachetti, 9222 South Bell Street, Chicago, Illinois.

Q. What company are you affiliated with? A. With Linco Products Corporation.

Q. And what is your position with that company, sir?
A. President of the company.

Salvatore Giachetti—Direct

Q. And how long have you been president of the Linco Company? A. Since 1931.

* * * * *

By Mr. Deveny:

Q. Will you tell us, sir, what business this company is engaged in? A. In manufacturing Linco Bleach.

Q. And does the company produce any products other than Linco Bleach?

(Tr. p. 2068)

A. Dry bleach, ammonia, and liquid detergent.

Q. And will you tell us, sir, the brand names for these other products other than bleach? A. Linco Ammonia, Linco Dry Bleach, Linco Fine Fabric Bleach and Linco Detergent.

Q. And is Linco the brand name? A. Yes.

Q. And where do you produce your bleach? A. 2155 West 80th Street.

Q. Is that the only location you have? A. Yes.

Q. Is that the City of Chicago, sir? A. The City of Chicago.

Q. What is the chemical composition of, roughly, of your Linco bleach? A. Part is caustic soda, part is chlorine and water.

Q. Would this be known as a sodium hyperchloride solution? A. It is.

Q. And what percentage of sodium hyperchloride is the solution of your bleach? A. 5.25.

* * * * *

Q. Do you manufacture your bleach, or do you use concentrate? A. We manufacture.

* * * * *

(Tr. p. 2069)

* * * * *

Salvatore Giachetti—Direct

Q. Could you tell us, sir, what sales area do you sell your bleach within? A. We sell in the middlewest; that takes in Illinois, Indiana, Michigan, Wisconsin, part of Iowa and part of Ohio.

Hearing Examiner Haycraft: You don't get into Minnesota?

The Witness: No.

By Mr. Deveny:

Q. Now for the other products that you described that you manufacture, do you sell those in the same area, your other products? A. Yes.

Q. And what sort of a sales organization do you have, sir, for the sale of your bleaches? A. We have twenty-five salesmen.

Q. Now, is that the only manner in which you sell bleach, through your own salesmen? A. Yes.

Q. Now do these salesmen sell your other products as well as the bleach? A. Yes.

Q. And do you have an administrative officer or head of these salesmen?

(Tr. p. 2070)

A. Yes, we have four district men and one general sales-manager.

Q. Could you tell us, sir, to what type of customer do you sell your bleaches and your—your bleaches first. A. We sell chains, co-ops and any independent jobbers.

Q. Do you sell to the retail store itself or is there an intermediate customer? A. We sell to the jobber and the jobber in turn sells it to the stores.

Hearing Examiner Haycraft: Is that true of chain stores? You sell direct to chain stores?

The Witness: Yes.

Salvatore Giachetti—Direct

Hearing Examiner Haycraft: And co-ops?

The Witness: Yes, and independent jobbers.

* * * * *

(Tr. p. 2071)

* * * * *

Q. Are your sales at a delivered price? A. Beg pardon?

Q. Are your sales made at a delivered price?

Hearing Examiner Haycraft: He means price delivered to the store.

The Witness: Yes, same as the jobber.

By Mr. Deveny:

(Tr. p. 2072)

Q. What you mean, sir, if you sell to the jobber, the price is to his location, delivery to his location? Does that explain it? A. Yes.

Q. And what methods of transportation do you use in delivering your bleach? A. We use trucks.

Q. Your trucks or independent trucks? A. Our trucks.

Q. When you deliver at a delivered price does that include the freight cost, transportation cost? A. It includes everything.

Q. Could you tell us, sir, what sizes of liquid bleach you sell? A. We sell quarts, half gallons, and gallons.

Q. You do not sell pints I take it? A. No.

* * * * *

(Tr. p. 2073)

Q. Now, getting back to the freight cost and your delivered price; is there any limitation upon the sales area of your bleach, your liquid bleach that would be based on freight cost? A. Yes, I would say three hundred miles.

Salvatore Giachetti—Direct

Hearing Examiner Haycraft: Three hundred?

The Witness: Yes.

Hearing Examiner Haycraft: You feel you can't afford to deliver more than that with your trucks?

The Witness: No, we won't be able to compete.

Hearing Examiner Haycraft: With people located in another area?

The Witness: Yes, sir.

By Mr. Deveny:

Q. That would be the freight basis? A. Yes.

Q. Could you tell us, sir, what other bleach brands are sold in your sales territory, in grocery stores? A. Well, number one, Clorox, two, Fleecy White, three, Hilex; Purex, Roman Cleanser.

Q. Are you familiar with the sodium hyperchloride content of those bleaches? A. Yes.

Q. Are they any different from yours? A. As far as we know there's no difference.

(Tr. p. 2074)

* * * * *

Q. Could you tell us, sir, what type of retail stores handle your bleach? A. Any retail stores, from the chain down to the small stores.

Q. Would that be in the grocery field as opposed to—
A. All in the grocery field.

* * * * *

(Tr. p. 2075)

* * * * *

Q. Is there a brand of bleach that is a predominant competitor with your bleach in this area? A. Yes. I would say number one competitor is Clorox.

* * * * *

Salvatore Giachetti—Direct

(Tr. p. 2077)

* * * * *

Q. Does your company advertise its products, sir?

A. Yes.

Q. Do you advertise your liquid bleaches? A. Yes.

Q. And in what media of advertising do you employ?

A. We use newspaper, radio and T-V.

Q. When you say radio and TV, is that spot advertising or program? A. Spot.

Q. And is there any frequency to the basis of using this media? In other words is it a continuous use of all these media or is it seasonal in any way? A. I would say it's seasonal. We usually have promotion in spring and fall, and that's the time we use TV especially.

Hearing Examiner Haycraft: What months would that be?

The Witness: Well, let's see, from March to June, September to November.

By Mr. Deveny:

Q. And why would you not advertise every month?

(Tr. p. 2078)

A. Because we find that that is the time that people use more bleach than any other time.

Q. And why is it necessary, sir, to advertise liquid bleach if you feel it is necessary? A. Well, we find that that's the only way to sell it. If we don't advertise, we won't be able to sell it.

Q. Have you found any particular media of advertising to be more effective in advertising your bleach than any other media? A. Well, I would say the TV would be more effective. Of course it is more costly.

Salvatore Giachetti—Direct

Q. When you advertise on TV, sir, do you advertise one product at a time or how do you work that? A. We advertise all products more or less.

Q. And why would that be, sir?

* * * * *

The Witness: We advertise all because we, that's the only way that we can sell it. We couldn't advertise just one and not the other. Of course the bulk of the advertising would be in the liquid bleach rather than the others.

By Mr. Deveny:

Q. Have you ever used any TV programs, ever sponsored

(Tr. p. 2079)

any TV programs, your company. A. Yes.

Q. How long ago was that or is it going on at present?

A. It is going on now.

Hearing Examiner Haycraft: Is that a program or spot?

The Witness: No, all spots.

* * * * *

Q. When you buy this TV advertising, sir, on what time basis do you buy your advertising?

* * * * *

The Witness: We usually buy what we call a

(Tr. p. 2080)

package spot, which means you get fourteen, fifteen or twenty spots and you have to accept it any time of the day.

Hearing Examiner Haycraft: That is so many a day?

The Witness: So many a day, or week.

Hearing Examiner Haycraft: So many each week.

Salvatore Giachetti—Direct

By Mr. Deveny:

Q. Do you buy that each week? A. No, thirteen weeks.

Q. Are you able to buy it for a year on a year basis? A. No, we don't buy on a year basis.

Q. Why would that be, sir? A. Because we don't use them all year around.

Hearing Examiner Haycraft: Do they quote to you at thirteen weeks, a certain number of weeks?

The Witness: Yes, the minimum that you can buy is thirteen weeks. Then if you are willing to buy another thirteen—

Hearing Examiner Haycraft: In other words that makes the twenty-six?

The Witness: Yes.

Hearing Examiner Haycraft: What do you usually buy?

The Witness: Thirteen weeks.

By Mr. Deveny:

(Tr. p. 2081)

Q. Do you advertise nationally in any media? A. No.

* * * * *

Q. Do you have any re-purchase agreements with your customers as to your products?

* * * * *

The Witness: We don't have an agreement, but we have a policy to repurchase, I guess, if they can't sell it.

By Mr. Deveny:

Q. Do you give free merchandise prizes to customers selling your bleach? A. Yes.

Q. Do you use count and recount in your liquid bleach?

Salvatore Giachetti—Direct

Hearing Examiner Haycraft: You'd better explain for the record what that is.

(Tr. p. 2082)

By Mr. Deveny:

Q. Do you understand? A. I understand.

Q. Would you explain what it is? A. Suppose you want to have a ten cents deal for a salesman; you count the cases, and after thirty days, you re-count them and see how many they sold.

Hearing Examiner Haycraft: Count the cases in the warehouse and on their shelves?

The Witness: No, just in the warehouse.

Hearing Examiner Haycraft: And whatever is sold during that period of time, you give them the discount is that it?

The Witness: Yes.

Mr. Royall: What did you say about the answer before that? that he did not have it?

Mr. Deveny: He hasn't answered it yet.

By Mr. Deveny:

Q. Now, sir, does your company use that discount—I mean, does your company use that count and recount?

A. Very seldom.

Hearing Examiner Haycraft: But you have used it, is that right?

The Witness: Yes.

By Mr. Deveny:

(Tr. p. 2083)

Q. On what basis would you use that, sir, if you, let us say, have used it very seldom? What is the basis for using it? A. Well, we need cooperation by the salesmen, the jobber's salesmen; and then we allow ten cents a case for the salesman. So we work for thirty days, pro-

Salvatore Giachetti—Direct

moting and selling Linco, and then, at the end of the thirty days, they get ten cents a case, whatever is sold.

Q. What is the purpose for using it? A. The purpose is to get jobbers' salesmen to sell our product.

Q. I understand—— A. I mean, send it to the jobbers' salesmen.

Q. To the jobber's salesman, instead of your own.

Hearing Examiner Haycraft: He gets ten cents?

The Witness: Yes. The jobber's salesman.

* * * * *

Q. Is your company affiliated with or a subsidiary of any other company, sir? A. No.

Q. Does your company own any interest in any other liquid bleach producer? A. No.

* * * * *

(Tr. p. 2084)

* * * * *

Q. Are you familiar with the Nielsen Food Index for liquid bleaches? A. Yes.

Q. Does your company purchase that? A. No, we don't.

Q. Why do you not purchase the Nielsen Bleach Index? A. Because it is expensive, an extra expense, and by having our sales force in the territory, we don't think it is too advantageous.

Hearing Examiner Haycraft: You don't think what?

The Witness: By having our salesforce in the territory, we don't think it is necessary to have it.

* * * * *

(Tr. p. 2086)

* * * * *

Q. Does your company have any dealer or jobber coop-

Salvatore Giachetti—Direct

erative merchandising plan on this liquid bleach? A.
Yes, we have.

Q. What would that amount to, sir? A. Well, we allow five cents a case for that advertising.

Q. Why do you offer that, sir? A. Because the whole bleach industry is doing it.

* * * * *

Q. Is that five cents—how do you figure that? What is the five cents for?

(Tr. p. 2087)

A. For advertising in their newspapers. You get two features a quarter in their own newspaper.

Q. Do you require proving or proof of the two features per quarter? A. Yes, sir.

Q. Does your company have an allowance or expenditure for purchasing in-store promotion space? A. What kind of promotion?

Q. I have in mind the floor space, end displays, islands, baskets, off-shelf. A. In some territory, where we need—

* * * * *

The Witness: Some territory where we need promoting of products, we use a display, floor display contract.

Hearing Examiner Haycraft: What kind of—

The Witness: Floor displays.

Hearing Examiner Haycraft: What does that call for? What do they have to do?

The Witness: Display the merchandise on the floor.

By Mr. Deveny:

(Tr. p. 2088)

Q. What do you pay, or what is your part of the contract? A. We pay ten cents a case for displaying it.

* * * * *

Salvatore Giachetti—Direct

(Tr. p. 2089)

Q. Are you aware, sir, that the Procter & Gamble Company acquired the Clorox Chemical Company at approximately August 1, 1957? A. Yes.

Q. And do you have an opinion as to the effect of this acquisition upon your business?

The Witness: I have an opinion, yes.

By Mr. Deveny:

Q. Would you state your opinion?

Mr. Royall: Objection.

Hearing Examiner Haycraft: Overruled.

The Witness: Well, I would say that this acquisition would create a situation where Linco Company will have a hard time to compete. When you stop to look at

(Tr. p. 2090)

the resources that they have, and the type of promotion that they put up when they buy or put out a new item, you can see that things are very serious. When they start a saturating campaign—that means radio, newspapers, TV, plus sampling coupons, all that put together, including floor displays in the stores, which they would be able to get following all this advertising; and not only that, but they would be able to get probably more shelf space than competition, and all that together would eliminate the small manufacturer like us.

(Tr. p. 2094)

Mario Giachetti—Direct

Mario Giachetti

was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Hearing Examiner Haycraft: Your name is——?

The Witness: Mario, M-a-r-i-o, Giachetti.

* * * * *

(Tr. p. 2095)

By Mr. Deveny:

Q. Would you tell us, sir, what company you are affiliated with? A. Linco Products Corporation.

Q. What is your position with that company, sir? A. Secretary-Treasurer.

Q. How long have you held that position? A. Since 1931.

Q. How long has the company been in business? A. Since 1925.

* * * * *

(Tr. p. 2100)

Mr. Giachetti, I would like to hand you Commission's Exhibit 464 for identification, and ask you if you can identify that for us, please. A. Yes.

* * * * *

Q. I will ask, sir, did that come from the books and records of the Linco Distributing Company as used in the ordinary course of business? A. Yes.

Q. Were these figures prepared under your supervision, or did you prepare them? A. Under my supervision.

Q. And normally, in the course of the business of your company, are your duties such that you would work with these books, records, and what have you, and would be familiar with them? A. Yes.

Mario Giachetti—Direct

Q. And this document would actually show the sales figures purported to be shown thereon. A. On the books, yes.

(Tr. p. 2101)

Mr. Deveny: At this time, your Honor, I would like to offer Commission Exhibit 464 for identification into evidence.

(Tr. p. 2104)

Hearing Examiner Haycraft: The Exhibit 464 for identification will be received in evidence and placed in camera.

(Tr. p. 2106)

By Mr. Deveny:

Q. Looking at Commission Exhibit No. 464, sir, I notice that you have totals for the years 1952 through 1957, for Linco Liquid Bleach. A. Yes.

Hearing Examiner Haycraft: It says "Linco;" it doesn't say bleach. Unless it says it in the caption. What does it say in the caption?

Mr. Deveny: I preceded myself. I will change the question.

By Mr. Deveny:

Q. You also have the caption "Bright Sail." A. Yes.

Q. Is that a liquid bleach, too? A. Yes.

Q. One further question on this exhibit: Are these representative net sales? A. Yes.

Q. Rather than gross? A. Yes.

Mario Giachetti—Direct

(Tr. p. 2108)

Q. I would like to hand you Commission's Exhibit No. 465 for identification, and ask you if you can identify that for us.

The Witness: That is the prices.

(Tr. p. 2109)

Q. Are they private prices? A. No; they are prices for all our customers.

Hearing Examiner Haycraft: To your customers?

The Witness: Yes. We sent it to them, or send it to them. Yes.

By Mr. Deveny:

Q. Were those prepared from your usual price lists, used in the course of your business? A. Yes.

Mr. Deveny: I would like to offer this at this time, your Honor.

(Tr. p. 2120)

Hearing Examiner Haycraft: Before you ask any more questions, let the reporter mark the exhibit as received.

(The paper referred to, heretofore marked for identification Commission's Exhibit 465, was received in evidence, in camera.)

Hearing Examiner Haycraft: Proceed.

By Mr. Deveny:

Q. Let me ask you, sir, the Bright Sail that we have been speaking of—to whom does your company sell that product? A. To the A&P stores.

Mario Giachetti—Direct

Q. And I notice that there is a price difference between the two bleaches, between Bright Sail and Linco. Is there any explanation for that, sir? Why are they different? Is there any explanation? A. Yes.

* * * * *

The Witness: They demand a lower price, saying that "we don't need to advertise and have any salesmen—have any sales expense with it; so we can quote a lower

(Tr. p. 2121)

price."

Q. At this point, sir, I would like to ask you what other brands of bleach does A&P sell in this area, if you know?

A. Clorox, Fleecy White, Linco, and the Bright Sail, as far as I know.

* * * * *

(Tr. p. 2122)

* * * * *

Q. Sir, I notice there are columns headed T/L, P/TL, and L/TL, and could I ask you, sir, what those particular symbols indicate or mean? A. Yes. It means truckload, part truckload and less truckload.

Q. And why would those prices be different under each of those columns? A. Truckload is of one size at one price, a truckload of mixed merchandise at a different price, and less truckload is a different price.

* * * * *

(Tr. p. 2136)

* * * * *

Q. I notice, Mr. Giachetti, that there is an offer on these labels for some nylon stockings. Can you tell us how long that offer has been in effect? A. About a year and a half.

Mario Giachetti—Direct

Q. Is that a premium that would be termed a self-liquidating premium?

(Tr. p. 2137)

A. Yes.

Q. Is that available to your bleach consumers in your entire area? A. Yes.

Q. I see. Mr. Giachetti, getting back to the price lists you were speaking of early this morning, let me ask you this. Is the Linco Bleach price on that list the same price to all your customers? A. Yes.

* * * * *

Q. Now, other than the discounts that are shown, the

(Tr. p. 2138)

quantity discounts shown on that exhibit, does the Linco Company have any other discount on its liquid bleach?

* * * * *

The Witness: Not except the two percent ten days.

* * * * *

Q. Does your company produce a dry bleach? A. No, we don't produce it, we sell it.

Q. Compared to your liquid bleach, sir, what portion of your total sales would the sale of dry bleach represent?

Mr. Royall: Objection.

Hearing Examiner Haycraft: Overruled.

The Witness: It is about six percent.

Mr. Royall: What?

Hearing Examiner Haycraft: Six percent.

By Mr. Deveny:

(Tr. p. 2139)

Q. Could you tell us, sir, do you have just one type of dry bleach or do you have several types? A. We have two.

Mario Giachetti—Direct

Q. Could you describe those for us please, sir? A. One is a perborete bleach, that's the base, and that is all for fine fabric items.

Q. And the other? A. The other is for heavy duty laundry and it is a chlorine base bleach.

Q. How long have you produced the heavy laundry bleach, sir? A. The heavy—

Q. I mean sold. A. Oh, about seven months.

Q. And the fine fabrics?

Q. And for the fine fabrics, sir? A. The fine fabrics about four years.

(Tr. p. 2140)

Q. Could you tell us, sir, what factors you must consider in setting the prices of your liquid bleaches?

The Witness: First thing we have to look at the competition we have. And—

By Mr. Deveny:

Q. Who would that be in this case? A. Number one would be the Clorox, and the next would be Fleecy White.

Q. When you say you must look at your competitors, what are you referring to, that you must look at?

(Tr. p. 2141)

The Witness: Well, we can't go out and price ourselves too high, too far away from our competition. We are actually pricing between.

Mario Giachetti—Direct

By Mr. Deveny:

Q. Between who?
Fleecy White.

A. Between Clorox prices and the

Q. Does anybody in this area sell higher than Clorox?

The Witness: No.

By Mr. Deveny:

Q. Do you have to consider any other factors in pricing your bleach?

(Tr. p. 2142)

The Witness: Yes, we consider our cost.

(Tr. p. 2143)

Q. Is there any difference between your bleach and the Clorox bleach as it stands in the bottle, sir? A. Not that we know.

Q. Now, sir, when your Bright Sail bleach that we have had some testimony about, is there any difference between that bleach and your liquid bleach? A. No.

Hearing Examiner Haycraft: Which bleach?

(Tr. p. 2144)

Mr. Deveny: The Linco, sir.

Hearing Examiner Haycraft: And what?

Mr. Deveny: And the Bright Sail.

The Witness: No.

Q. May I clarify that and say, may I change my question, Your Honor. Is there any scientific research facility connected with your company?

Mario Giachetti—Direct

(Tr. p. 2145)

A. No, but we have a chemist in the company.

Hearing Examiner Haycraft: You have a chemist in your own company?

* * * * *

By Mr. Deveny:

Q. Is the production of liquid bleach a highly technical subject? A. It is not highly technical, but it has to be exact in the procedure of making it.

Q. What would that be? A. For instance if the temperature of the liquid bleach goes up a hundred two degree it becomes a reaction and that will have an unstable solution, it couldn't be sold.

* * * * *

(Tr. p. 2146)

* * * * *

Q. Is the machinery expensive that is involved in your process for producing liquid bleach? Well, I wouldn't say expensive; it is costly.

Q. What would be the value of the present machinery you have? A. Machinery including tanks and all of that, about two hundred fifty thousand dollars.

Q. Is this machinery readily available on the open market? A. It is available, yes, on the market in about sixty day delivery.

Q. Is the machinery manufactured according to a standard design? A. Yes.

Q. Can you use it for any other purpose? A. No.

Q. Is your company at the present time producing liquid bleach at its full capacity? A. No, we could produce more.

Q. Under what circumstances could it produce more? What would you have to do?

* * * * *

Mario Giachetti—Direct

(Tr. p. 2147)

The Witness: Well, we have one shift. We could readily go into two shifts and with a little cost produce twice as much.

By Mr. Deveny:

Q. Has your company ever considered expanding its sales territory? A. No, we could not do that unless we would have a factory in the place where we want to expand because of the cost of transportation would be too high over two hundred fifty miles.

* * * * *

(Tr. p. 2148)

* * * * *

Q. Has your company experienced price increases since 1952, sir? A. Yes.

Q. And what factors would be contributory to increasing the prices you have?

* * * * *

The Witness: Mostly the cost, increased cost of bottles and to some lesser extent the cost of chemicals and freight on chemicals.

By Mr. Deveny:

Q. Are these cost increases, is that it, cost increases to you that would have been reflected in your increase? A. Yes.

Q. Have you passed all of those cost increases on to your customers?

* * * * *

(Tr. p. 2149)

A. No.

Q. And why haven't you been doing that?

* * * * *

Mario Giachetti—Direct

The Witness: Some time we absorb it, and some other times we have to pass it on.

By Mr. Deveny:

Q. Why would you absorb it, sir?

* * * * *

The Witness: If we can make it, we'll stay within the old price.

By Mr. Deveny:

Q. Has your company ever used an off label price on its liquid bleach? A. Yes.

Q. When was that, sir? A. Last year in October, '57.

* * * * *

Q. Well, could you explain what an off price label is?

A. It is printed on the label, five cents off of the regular price.

Q. And what—was that used in your entire sales

(Tr. p. 2150)

territory? A. Yes.

Q. And was there any result that was apparent to you from the use of this label? A. Yes.

Q. What was that result?

* * * * *

The Witness: We had that sale for about thirty days and we sold a little bit better than twice as much as the month previous.

* * * * *

(Tr. p. 2153)

Q. Could you tell us, sir, what percent of your total gross sales is represented by sales of liquid bleach?

* * * * *

The Witness: About ninety-four percent.

Mario Giachetti—Direct

Hearing Examiner Haycraft: Ninety-four percent?

The Witness: Yes.

Hearing Examiner Haycraft: I thought you said the dry bleach was six percent.

The Witness: Well, all the other products. Probably ninety-two percent. I don't have the figures present in my mind.

Hearing Examiner Haycraft: You think about ninety-two percent?

The Witness: Ninety two percent of bleach and eight all the rest.

Hearing Examiner Haycraft: The reason I was questioning, it came up to a hundred and there was some other stuff left over.

By Mr. Deveny:

Q. Would that ninety-two percent include the dry bleach or exclude it? A. No.

* * * * *

(Tr. p. 2162)

* * * * *

Mr. Deveny: Miss Reporter, may I have marked as Commission's Exhibit 469 for identification a single sheet typewritten purporting to give a summary of advertising for the Linco Distributing Corporation.

(The document referred to was marked Commission's Exhibit 469 for identification.)

By Mr. Deveny:

Q. I would like to hand that to you, sir, and ask you if you know what that is? A. Yes.

Q. Can you identify that? A. Yes.

Q. Would you tell us, please, what that does show?

Mario Giachetti—Direct

A. This is the advertising expense for the years 1952, 1953, 1954, 1955, 1956 and 1957.

Q. I notice there is a single figure for each year. Is

(Tr. p. 2163)

that the total? A. That is the total for the year.

Q. Does that include advertising only or does that include advertising and promotional expenditure? A. Advertising and promotion.

Q. Was this prepared at or under your supervision?

A. Yes.

Q. From company records and books? A. Yes.

Q. Are these company books and records used in the ordinary course of business of the corporation? A. Yes.

Mr. Deveny: I would like to offer that at this time, and my understanding is the witness desires it to be placed in camera.

* * * * *

(Tr. p. 2165)

* * * * *

(The document referred to, heretofore marked Commission's Exhibit 469 for identification, was received in evidence.)

* * * * *

(Tr. p. 2166)

Edwin B. Hahn

was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Deveny:

Q. Will you please state your name and address? A.

Edwin B. Hahn—Direct

Edwin B. Hahn, 5968 Howard Avenue, LaGrange Highlands, Illinois.

Q. Will you tell us, sir, what company you are affiliated with? A. Linco Corporation.

Q. What is your position with that company? A. General sales manager.

Q. How long have you been employed in that position? A. Since November of 1956.

Q. What positions did you hold prior to your employment with Linco? A. Prior to that time, I was a sales manager for Doeskin Products Corporation out of New York City, and prior to that I spent some 15 years with Colgate in the soap division, in both as sales manager..

Q. What are your present duties with Linco? A. Well, I set up and oversee the complete marketing operation for the company.

Q. Does the administration of the sales force come under

(Tr. p. 2167)

your position? A. That is correct.

Q. Are you familiar, then, with Linco's promotional activities? A. Yes, I am.

Q. And their advertising activities? A. Yes, sir.

Q. Do you have any familiarity with the budgeting of advertising and promotional allowances? A. Yes, I do.

Q. Are you familiar with the Proctor and Gamble Company's promotional activities? A. Yes, I am.

Q. And of their selling activities? A. Yes.

Q. What would be the basis for your knowledge in that instance? A. Well, I have spent my entire life, adult life in the food field, and work as a direct competitor to Proctor and Gamble for some fifteen years in the soap business.

Q. Are you familiar with the Clorox Company's selling activities since August 1, 1957? A. Yes, I am.

Edwin B. Hahn—Direct

Q. How does Linco administer its sales area—what is the breakdown?

(Tr. p. 2168)

A. Of the sales personnel?

Q. Well, first, the geographical area? A. Oh. We cover the State of Illinois, the entire State of Wisconsin, about two-thirds of the State of Michigan, half of the State of Indiana, and a portion—I am not prepared to give you the percentage of the State of Iowa, and the State of Ohio.

* * * * *

(Tr. p. 2169)

* * * * *

Q. Now, can you tell us, sir, how Linco would promote its liquid bleach, or how does it promote its liquid bleach?

A. We promote our product through means of advertising media which include newspaper, radio, TV spots, and also used to supplement that is so-called consumer offers which promotes the product on through, and sells it through to the consumer, the consuming public.

* * * * *

Q. Could you define some of them for us? A. Well, we use off-label promotions which are very

(Tr. p. 2170)

popular and have been for several years now.

There have been instances in so-called low spot areas where we have used in a limited way couponing activity. We have used self-liquidating premiums to a lesser degree, and I believe that just about covers it.

Q. You say couponing is used in low spot areas. Would that indicate it is not used in or on a full scale territorial basis? A. We have never, or the company has never

Edwin B. Hahn—Direct

to the best of my knowledge used couponing activities on an overall basis because of the excessive expense involved.

Q. Now, the other activities that you describe, are they used on a full territorial basis? A. Yes. So far as off-label promotion is concerned, that is used on a company-wide operation.

Q. Is there a frequent use made of that? A. Pretty generally we confine a bleach promotion to the spring and fall of the year, generally for a 30 day period only.

* * * * *

(Tr. p. 2171)

* * * * *

Q. Let me put it this way. What are the competitive factors that you have to consider in selling your liquid bleach? A. Well, promotional activities and promotional efforts put behind our line of bleach products in order to compete with the competition which we are faced with in the various areas, to enhance our position in the market, or in many other cases to maintain our share of the consumer usage market in those areas.

Does that answer your question?

Q. I think so. What effect does shelf space in the grocery retail outlets have on the sales of your liquid bleach? A. Well, it is the prime factor. Without adequate and ample shelf space you are out of business.

Q. What determines whether or not liquid bleach will obtain shelf space?

* * * * *

The Witness: The determining factor as to the amount of shelf space that you received in today's super market is brought about by the amount of pre-selling that you are able to do in all forms of promotional and advertising activity to create the turn-over that is neces-

Edwin B. Hahn—Direct

(Tr. p. 2172)

sary in modern-day retailing.

Without the so-called consumer demand or consumer acceptance, you receive no shelf space.

By Mr. Deveny:

Q. Is there a principal brand with which you compete in this sales territory in liquid bleach? A. I would say on an overall basis the brand would be Clorox.

Q. Why is that brand a principal competitor?

* * * * *

The Witness: Well, I can best explain that to you by reason of this being the only brand to my knowledge that is in national distribution. In other words, it is marketed in a substantial way in our entire marketing area.

* * * * *

(Tr. p. 2178)

* * * * *

Q. Does Clorox liquid bleach lend itself to this type of promotional activity we have been discussing?

* * * * *

The Witness: Very definitely, it does lend itself to the type of promotional activities that you

(Tr. p. 2179)

have been speaking of because it fits into the general house-cleaning product category.

* * * * *

Q. Is that a store category? A. Yes.

* * * * *

Q. What would that category include?

* * * * *

Edwin B. Hahn—Direct

(Tr. p. 2180)

* * * * *

The Witness: That category would include all types of household cleaning products to take in soaps, detergents, cleansers, starches,—anything that is used in a cleansing, and to include bleaches.

* * * * *

Q. Do you have a problem in obtaining shelf space for your Linco liquid bleach?

The Witness: Yes, we do. Currently, based on our share of the market, we do not feel that we have at this time the proper shelf position.

Hearing Examiner Haycraft: What is your share of the market?

* * * * *

(Tr. p. 2181)

* * * * *

The Witness: Between 45 and 50 per cent in the city of Chicago—metropolitan Chicago.

Hearing Examiner Haycraft: What do you base that on?

The Witness: Consumer usage.

Hearing Examiner Haycraft: Have you made any study?

The Witness: Yes, from reports received from various of our direct buy accounts.

* * * * *

(Tr. p. 2182)

* * * * *

Q. How do you obtain shelf space?

* * * * *

The Witness: We obtain shelf space through the promotional efforts on the part of our company in pre-

Edwin B. Hahn—Direct

(Tr. p. 2183)

selling our product to the consumer, and also by reason of the sales and marketing division of our company urging the retailers to give us proper positioning based on our position in the market.

(Tr. p. 2184)

Hearing Examiner Haycraft: Well, does it follow, then, that your firm, Linco, has 50 per cent, or approximately 45 per cent of the business of the liquid bleach in the Chicago metropolitan area?

(Tr. p. 2185)

The Witness: We have between 45 and 50 per cent of the current bleach business in Chicago, but we are not enjoying 45 to 50 per cent of the shelf space.

Hearing Examiner Haycraft: I see. Now, what do you base this estimate of 45 to 50 per cent of your sales of liquid bleach on?

The Witness: Well, we don't use Nielsen, but we have used the Tribune Panel poll, which is furnished to us locally here on a regular basis, which shows our share of the market in ounces consumed, or consumer usage, and so on, and also from reports that are obtained from the chains and directly by wholesalers.

(Tr. p. 2186)

Q. Are the basic competitive problems in selling soaps, cleansers, and detergents any different from the basic competitive problems found in selling liquid bleach?

Edwin B. Hahn—Direct

The Witness: The same problems exist.

* * * * *

Throughout the entire household section.

* * * * *

(Tr. p. 2189)

* * * * *

By Mr. Deveny:

Q. Do you have any special promotion for fall or spring house-cleaning drives? A. We pretty generally always run a special promotion on our liquid bleach.

Q. What would be the details of that promotion? How is that operated?

(Tr. p. 2190)

A. We make available to all accounts that we do business with, an off-label offer which has a tendency to stimulate the movement of the product, and enhance our share of the market, or in the cases of markets where we are battling to get a stronger position may enhance us again a little to get a greater share of the market.

Q. Do you gain a greater share of the market as a result of the campaign? A. You do, temporarily. You do not always maintain the gain that is made during the promotional efforts—you drop back, but pretty generally you solidify your position in the market.

Q. Does Fleecy White engaged in that type of—
Hearing Examiner Haycraft: Who makes Fleecy White, by the way?

The Witness: It is the John Puhl Division of Sterling Drug Company.

By Mr. Deveny:

Q. Does Fleecy White and Clorox use these spring and fall house-cleaning campaigns? A. Fleecy White, to

Edwin B. Hahn—Direct

the best of my knowledge, since I have been with the company, have not used this type of promotional activity. Apparently, they have a preference for marketing their product at an every-day low price; they are considerably under the balance of the bleach

(Tr. p. 2191)

manufacturers within our marketing areas as far as costs to the chains or wholesalers are concerned. As relates to Clorox, they have used spring clean-up drives where they used a stepped-up advertising campaign, with point of sale material to include window banners, shelf talkers, shelf strips, et cetera, et cetera.

Q. Has there been any change in the 1958 spring drive of Clorox which was apparent to you?

* * * * *

The Witness: Well, we have noticed a premium offer which currently is being offered on Clorox; in fact, it is now in effect, and also stepped-up activity so far as the TV spots, and newspaper advertising is concerned.

By Mr. Deveny:

Q. In your spring and fall house-cleaning campaign of Linco, do you tie that in with any other product—do you tie your bleach in with any other products? A. No, we promote it on its own.

Q. In what section of the grocery store do you find liquid bleaches shelved? A. In the household section.

* * * * *

(Tr. p. 2192)

* * * * *

Q. What are the price differentials between your liquid bleach and all of your competitors in this area?

Hearing Examiner Haycraft: Retail to customers?

Edwin B. Hahn—Direct

Mr. Deveny: Yes, retailed.

The Witness: Well, speaking of a gallon size, would you like me to name the brands?

Mr. Deveny: Yes.

The Witness: Our product, Linco, in gallon size generally is retailing between 53 and 55 cents at the present time. Clorox gallons are retailing anywhere from 55 to 61 in our marketing area and Fleecy/White, which is the other principal competitor, their prices are ranging from 45—excuse me—from 49 to 55, depending on the locality.

* * * * *

(Tr. p. 2193)

* * * * *

Q. Let me phrase it this way: Do you maintain that price differential in your pricing practice?

* * * * *

The Witness: Do we maintain—would you ask the question again?

Hearing Examiner Haycraft: To what extent do you maintain that differential that you are talking about in your market? You give this general range in prices; has that always been true?

The Witness: We have always—we have been pretty much in the middle bracket.

By Mr. Deveny:

(Tr. p. 2194)

What I am getting at is this: In your pricing policies, do you attempt to maintain that differential between your liquid bleach and the Clorox liquid bleach?

Mr. Royall: Objection.

Hearing Examiner Haycraft: Overruled.

Edwin B. Hahn—Direct

The Witness: No. Our pricing policies are dictated by cost of raw materials, cost of advertising, and the sales costs or marketing costs.

Q. Let me ask you this: Step by step, how do you determine the price for Linco?

Mr. Royall: Objection. He has just testified how.

Mr. Deveny: Linco bleach.

Mr. Royall: He has just testified to that.

Mr. Deveny: No, your Honor; I think he testified with respect to price differentials. Now I am getting back to the basis of that.

Mr. Royall: I would like to have the previous answer read by the reporter.

(Tr. p. 2195)

Hearing Examiner Haycraft: You had better listen to that previous answer. Read the last answer the witness made.

(Answer read.)

Hearing Examiner Haycraft: Is your answer complete?

The Witness: I will add to that, taking into consideration a reasonable profit.

(Tr. p. 2204)

Room 1310, 226 West Jackson
Chicago, Illinois

Thursday, May 15, 1958

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

Mario Giachetti—Cross

(Tr. p. 2205)

Hearing Examiner Haycraft: This hearing will come to order.

* * * * *

Mario Giachetti

having been previously duly sworn, resumed the stand and testified further as follows:

* * * * *

(Tr. p. 2208)

CROSS EXAMINATION

By Mr. Royall:

* * * * *

(Tr. p. 2215)

Q. Now, I believe you stated, did you not, that the Linco Products Corporation was incorporated on June 16, 1931? A. Yes, sir.

Q. Its paid-in capital was \$12,000, wasn't it? A. Yes.

* * * * *

Q. And its present net worth is \$210,175?

* * * * *

(Tr. p. 2216)

* * * * *

Q. Is that right? A. Whatever the records show.

Q. What do the records show? Don't you know your net worth? A. I wouldn't know from memory.

Q. It is over \$200,000? A. Yes.

* * * * *

Q. Now, the Linco Products Corporation has a net worth of \$236,468, does it not?

* * * * *

Mario Giachetti—Cross

The Witness: Yes.

By Mr. Royall:

Q. Have dividend distributions been made from both of those companies over the years?

* * * * *

Hearing Examiner Haycraft:

* * * * *

(Tr. p. 2217)

* * * * *

You may answer that question—just that question.

The Witness: About dividends?

Hearing Examiner Haycraft: Have you paid dividends?

The Witness: Yes.

* * * * *

By Mr. Royall:

Q. Now, before the Linco Products Corporation was organized, and some time before the Linco Products Distributing Company was in operation, you and your brother had a partnership business with just a few hundred dollars investment originally, didn't you? A. Yes.

* * * * *

(Tr., p. 2235)

* * * * *

Q. Yesterday you gave some figures on advertising and I don't want to ask you the amount of the figures because those figures are confidential.

I asked you when did you start newspaper advertising?

* * * * *

(Tr. p. 2236)

* * * * *

The Witness: About 1929 or 1930.

Mario Giachetti — Cross

By Mr. Royall:

Q. Your advertising methods have varied from time to time, have they not? A. Yes, sir.

Q. You have emphasized or have emphasis on one thing at some time, and on another thing at another time, is that right? A. Yes, sir.

Q. Depending on the circumstances existing. A. Yes, sir.

Q. And you have learned that sometimes the public gets tired of one form of advertising and you use another, is that right? A. Yes, sir.

Q. And that same goes for promotion, does it not? A. Right.

Q. Now, you referred, I believe, in your testimony yesterday, to television spots. I will ask you if you have not had a five-minute television program, the Dorsey Connors show.

* * * * *

(Tr. p. 2237)

A. Yes, sir.

* * * * *

(Tr. p. 2239)

* * * * *

Q. I believe you testified that your bleach was not made by dilution of a stronger mixture, is that right? A. Right.

Q. Many brands of bleach are made that way, are they not? A. Yes.

Q. You can take the stronger solution and by merely adding water and so on make a liquid bleach of five and a quarter per cent, can you not? A. Yes, sir.

Q. And that is done even by some regular brands, is it not? A. Yes, sir.

* * * * *

Mario Giachetti—Redirect

(Tr. p. 2240)

* * * * *

REDIRECT EXAMINATION

By Mr. Deveny:

Q. On the five-minute program that you have testified your company sponsors, during cross-examination, is yours the only company, the only company that sponsors

(Tr. p. 2241)

or is sponsoring the show? A. No.

Q. There is no co-sponsor. A. No.

Q. What is the frequency of the program appearing on the air? A. Well, we have two a day, or three days a week.

Q. I am talking about the program—I can't remember the name of the program that Mr. Royall has been talking about. A. It is a daily program. At night.

Hearing Examiner Haycraft: The five-minute program.

The Witness: It is a fifteen minute program, but we get five minutes.

By Mr. Deveny:

Q. Your company has five minutes of the fifteen. A. Yes.

Q. What kind of a program is it? A. Dorsey Connors program. Household hints, suggesting how to run the house and gadgets.

Q. What time of the day does that program appear? A. That is 10:30.

Q. Is that a.m.? A. At night.

(Tr. p. 2242)

* * * * *

Mario Giachetti—Recross

Q. Why does your company manufacture bleach in the manner that it does, rather than diluting or concentrating? A. Because it is more economical.

* * * * *

RECROSS-EXAMINATION

By Mr. Royall:

* * * * *

(Tr. p. 2243)

* * * * *

Q. You have got it back on now, haven't you? A. No.

Q. You are going to have it back on in a few days or weeks, isn't that right? A. I don't know.

* * * * *

(Tr. p. 2244)

* * * * *

Edwin B. Hahn

a witness called for the Commission, having been previously sworn, resumed the stand and testified further as follows:

DIRECT EXAMINATION (Continued)

Hearing Examiner Haycraft: Mr. Hahn has a correction to make, too, in his testimony.

The Witness: I was asked a question yesterday in regard to our pricing practices and policies, as to what yardstick we used. In other words, we used—well, I made the statement that we used cost of raw materials, marketing costs and advertising costs in connection with our pricing policies; and I would like to add to that that we have always paid particular attention to Clorox prices, inasmuch as we were never able to, under the former Clorox

Edwin B. Hahn—Direct

ownership, match advertising dollars or come anywhere near matching advertising dollars and ex-

(Tr. p. 2245)

penditures with Clorox, and therefore felt that it would to be our tremendous disadvantage and would injure the sale of our product were we to price our product above Clorox prices.

* * * * *

By Mr. Deveny:

Q. Mr. Hahn, have you had an opportunity to check the company's records to determine what portion of the

(Tr. p. 2246)

company's sales are sold in Metropolitan Chicago? A. Yes, I have. The figures have been drawn off of our books. It is 61 per cent, Metro Chicago as opposed to the balance of our marketing area.

* * * * *

(Tr. p. 2248)

* * * * *

CROSS-EXAMINATION

By Mr. Royall:

* * * * *

(Tr. p. 2257)

* * * * *

Q. I will ask you if seven new brands of bleach did not enter the Chicago market in 1957, as shown by the Chicago Tribune Consumers Panel, which you referred to yesterday. A. I am not familiar with it, but it could have been many many more so-called bathtub operations began here on a door to door basis; and they come and go every week. In fact, they even pack the product in our bottles part of the time.

Edwin B. Hahn—Cross

Q. So you have a lot of different competitors, don't you?

A. These we do not consider as competition or as competitors.

(Tr. p. 2258)

* * * * *

Q. You know about this Dorsey Connors show, don't you.

A. Yes.

Q. Is that on now? A. Yes, sir.

* * * * *

Q. That has recently been resumed, hasn't it? A. Resumed?

Q. The Dorsey Connors show. A. Have we resumed it?

Q. Yes. A. We have resumed it.

Q. In the past few weeks or months? A. Yes.

Q. Now, in promoting Liquid bleach, did you give

(Tr. p. 2259)

away from time to time free cases?

* * * * *

The Witness: We have used it in a promotional way, not in selling bleach, but as was testified here yesterday, in lieu of cashed display allowances.

* * * * *

(Tr. p. 2261)

* * * * *

The Witness: May I make a statement?

(Tr. p. 2262)

Hearing Examiner Haycraft: Yes.

The Witness: I believe testimony was given here yesterday that from time to time we used equivalent to cash, or cash, on a per case basis for floor displays in marketing

Edwin B. Hahn—Redirect

areas which we consider to be low spot areas. This may be what you are referring to.

* * * * *

(Tr. p. 2269)

REDIRECT EXAMINATION

By Mr. Deveny:

* * * * *

(Tr. p. 2270)

Q. Why was the price increase in February of 1958 on your liquid bleach put into effect? A. Well, this was a combination of factors: increased marketing cost on an over-all. We had increased cost within all our manufacturing facilities, freight facilities, and so on, and for this reason we were forced to take an increase in price.

* * * * *

(Tr. p. 2273)

Salvatore Giachetti,

a witness for the Commission, resumed the stand and, having been previously duly sworn, testified further as follows:

CROSS-EXAMINATION

* * * * *

(Tr. p. 2287)

Room 1310, 226 West Jackson
Chicago, Illinois

Friday, May 16, 1958.

Met, pursuant to adjournment, at 3:00 p.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

863a

Neil A. MacDonald—Direct

(Tr. p. 2303)

Room 300
United States Customs House
Second and Chestnut Streets
Philadelphia, Pennsylvania

Tuesday, May 20, 1958

Met, pursuant to notice, at 10:00 o'clock a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

(Tr. p. 2304)

PROCEEDINGS

(Tr. p. 2306)

Neil A. MacDonald

was called as a witness on behalf of the Commission, and
having been duly sworn, was examined and testified as
follows:

(Tr. p. 2307)

Hearing Examiner Haycraft: What is your full name?

The Witness: Neil A. MacDonald.

DIRECT EXAMINATION

By Mr. Tincher:

Q. Mr. MacDonald, would you tell us what your occupation or position is? A. I am Treasurer of the Hood Chemical Company, Ardmore, Pennsylvania.

Neil A. MacDonald—Direct

Q. What business is that company engaged in, sir?
A. In manufacturing and selling household chemicals.

Q. How long have you been connected with the Company?
A. Approximately 10 years.

Q. Have you been the Treasurer of the Company during all that period?
A. Yes, sir.

Q. As the Treasurer of the Company, do you have access to and work with the books and records of the Company?
A. I do, yes.

Q. Would that apply to the financial books and records?
A. The financial books and records, yes.

* * * * *
(Tr. p. 2308)

Q. I hand you what we have marked as Commission's exhibit 472 for identification, and ask you if you will tell us what that document is, the source of the figures thereon, and how they were obtained?
A. Well, this document is a record of the net sales of liquid bleach by bottle size for the years 1952 through 1957. These figures were taken from the audited annual report of the Hood Chemical Company for the respective years.

Q. Was that work done under your direction and supervision?
A. This work was done under by direction.

Q. Can you tell us how accurate those figures are?

* * * * *
(Tr. p. 2309)

The Witness: Because of the way we keep our records, these figures are accurate, not to the cent, but probably to the—well, I would say a hundred dollars, in each total. They had to be arrived at by obtaining the number of cases of each size that were sold, multiplied by the average

Neil A. MacDonald—Direct

price of that product, and they are as accurate as figures could be, taken from the records we have.

By Mr. Tincher:

Q. Now in your bookkeeping system, the way your accounts are set up, is it possible for you to have what you refer to as the exact down to the last cent figure? A. It is possible, but it is a lot of work. It could be done, but I would say it would take, for these six years, it would take me, and I think I know the records, at least 30 to 45 days.

Hearing Examiner Haycraft: You mean by that that you would have to take every invoice?

The Witness: We would have to take every invoice, yes sir.

Mr. Tincher: I offer Commission's exhibit 472, sir.

* * * * *

(Tr. p. 2310)

* * * * *

Hearing Examiner Haycraft: The exhibit will be received in evidence, subject to a motion to strike later, if there is any inaccuracy found. It may be received in camera.

* * * * *

By Mr. Tincher:

Q. Let me hand you Commission's exhibit 473 for identification, sir, and I ask you to tell us what that is? A. This is the regular annual report of the Hood Chemical Company, Ardmore, Pennsylvania, which was prepared under my

(Tr. p. 2311)

direction, and audited by Price Waterhouse & Company.

Neil A. MacDonald—Direct

Q. Is that a regular procedure of the Company, that was not prepared for this hearing? A. It is a regular procedure, yes.

Q. Is this annual report, has it been published annually? A. It has been published annually, yes.

Mr. Tincher: I offer Commission's exhibit 473 for identification, sir.

* * * * *

(Tr. p. 2312)

* * * * *

(The document referred to, having heretofore been marked Commission's exhibit 473 for identification, was received in evidence.)

* * * * *

(Tr. p. 2318)

* * * * *

Q. Mr. MacDonald, I hand you Commission's exhibit 479 for identification and I ask you what it is, who prepared it, and what books it was taken from? A. This document is a summary of the advertising and promotional expenditures, made by the Hood Chemical Company, Inc., during 1952 through 1957. It was prepared by myself and my assistants, from the regular annual audited records of our company's business.

Q. And are the amounts thereon for liquid bleach only, rather than all your products? A. The amounts are for liquid bleach only and do not pertain to any other product.

Mr. Tincher: I offer Commission's exhibit 479. I believe it should be in camera, as are comparable documents.

* * * * *

Neil A. MacDonald—Direct

(The document referred to, heretofore marked Commission's exhibit 479 for identification, was received in evidence and ordered to be SEALED)

* * * * *

(Tr. p. 2329)

* * * * *

Q. Mr. MacDonald, I will show you now Commission's Exhibit 481—and this document is in camera, so we won't talk on the record about what the actual figures are—but I notice in Section A that there is a decrease in 1957 of that cost factor over what the cost factor was in prior years, a decrease from 1953. I will ask you if there is any reason that you know of for that decrease? A. Yes, there is. There are two very good reasons. One, which we like to claim, is more efficient operation, and the

(Tr. p. 2330)

other is the fact that we moved our plant from Fullerton, Pennsylvania, to South Plainfield, New Jersey.

Q. And why did that cause a cost decrease, sir? A. Well, it shortened the haul into the New York area.

Q. Is the New York area one of your major markets? A. One of our major markets.

(Tr. p. 2331)

Q. Now, sir, I will show you Commission's Exhibit 479, once again this is an in camera document so we won't discuss actual figures but I will indicate to you that there have been a considerable number of changes by media used for advertising and I will ask you if you know the answer as to why these various changes have occurred? A. Well, I don't think anyone knows the answer, but I know the reason.

Q. And what is that, sir? A. Well, one year if you do a lot of advertising through a certain medium and you

Neil A. MacDonald—Direct

achieve the results you expected or don't achieve them, especially if you don't achieve the results you expected you try another medium, and that is exactly what we have done. It is very evident by looking at this that in one year we spent a considerable amount of money through one medium, I happen to be looking at the newspaper now, and the next year we spent a very small percentage of that, and the same applies right through each medium. I think that's the best explanation or answer that I can give.

Q. Well, let me ask you, sir, if there is any reason why your company doesn't use all the media, rather than concentrating and switching back and forth on various single media? A. Yes. It is a question of cost. We couldn't afford to use all the media to the extent that we would get results from it. You don't get results in our business from putting an ad in

(Tr. p. 2332)

the paper and hoping that that will do from now on for six months. Our business is one that you must have continual advertising. You have to show your product in some way, talk about it this week and next week and next week, so on.

I think the same is true to most of the type of business we are in. We find it that way, anyway, and that is the reason for the fact that we didn't continue to the full extent with any one particular medium.

Q. All right, sir, thank you.

(Tr. p. 2333)

Q. Also, sir, on Commission's Exhibit 472 which is the amounts of the various cases sold and once again it is an in camera document, but I notice in recent years your company has commenced selling a pint size of liquid bleach. Will you tell us the reason for that undertaking and, well,

Neil A. MacDonald—Cross

just tell us that first? A. Well, in certain areas we felt there was a demand for it, especially among the, what would you say, the people that can't afford to spend much money on any certain given day.

Q. And where are the pint sizes being sold, sir? A. Mostly in Florida, in fact all of them in Florida.

* * * * *

(Tr. p. 2334)

* * * * *

CROSS-EXAMINATION

By Mr. Royall:

* * * * *

(Tr. p. 2336)

* * * * *

Mr. Tincher: I would like to state now and have the record show that I have instructed the witness in preparing these documents to absolutely have no break out of private label bleaches and I would insist on any inspection of the books that that information not be made available to respondent.

Mr. Royall: Well, I would object to any such restriction, your Honor. Any information we would get would be confidential. We are trying to simplify this matter and he says he has the liquid bleach figure for both—

Mr. Tincher: He said he had it both ways, sir, in total and also in break out.

Mr. Royall: Well, we would like to examine that, your Honor.

Hearing Examiner Haycraft: That will be up to the witness. If he has no objection to showing you his private brand sales that is all right, there has been no question asked on direct which would involve or require such a disclosure.

* * * * *

Neil A. MacDonald—Cross

(Tr. p. 2339)

By Mr. Royall:

Q. You spoke of moving your plant to Plainfield, New Jersey. When was that move made? A. It was started in July of 1957 and, of course, we had to keep in production both places, and I would say it was completed so that production was in the new plant approximately—let us say—the 10th of September. About that day. It could be a few days from that either way.

Q. Now, do your records show the size and capacity of your

(Tr. p. 2340)

old plant and your new one? A. No, I don't think it does. It is pretty hard to gauge the capacity of a plant that is manufacturing our product.

Q. Manufacturing what? A. Liquid bleach. We have never run it to capacity, so I can't give you a definite answer on it.

Q. You haven't got anything in your books that show that? A. No, we don't.

Q. You would have something in your books as to the size and some other facts about it? A. Yes, you have the machinery and the size.

Q. Now, is the Plainfield plant now the only plant you have? A. No, we have four plants.

Q. Where are they? A. One is in Jacksonville, Florida; one in Lisbon, Ohio; one in Charlotte, North Carolina; and one in South Plainfield, New Jersey.

Q. Have they also been recently built? A. Well, I don't know what you mean by recently?

Q. When was it built? A. The Jacksonville plant is

Benjamin Kunin—Direct

approximately seven to eight years old; the Charlotte plant is four to five; the Lisbon plant is an old plant.

* * * * *

(Tr. p. 2341)

* * * * *

REDIRECT EXAMINATION

By Mr. Tinch:

Q. Mr. Royall asked you on cross-examination if the price list referred to your private labels. You said No. Are your private labels higher or lower than the prices you have given us? A. They are lower.

* * * * *

(Tr. p. 2344)

* * * * *

Benjamin Kunin

was called as a witness and, after being properly and duly sworn, was examined and testified as follows:

Hearing Examiner Haycraft: Will you state your full name?

The Witness: Benjamin Kunin.

* * * * *

DIRECT EXAMINATION

By Mr. Tinch:

Q. Mr. Kunin, will you tell us what company you are affiliated with, sir? A. Hood Chemical Company.

Q. And what is your position with that company? A. General sales manager.

Q. And how long have you held that position, sir? A. Seven years.

Q. Do you know how long the Hood Chemical Company has been in existence? A. Well, no; I don't. My tenure has been since January 1,

Benjamin Kunin—Direct

(Tr. p. 2345)

1947.

Q. And what were you prior to the time you became "general"? A. The divisional sales manager.

Q. And what do your duties as general sales manager consist of, sir? A. Well, supervising all sales, and that is about the extent.

Q. Do you get out into the field and study market conditions and your company's products? A. Yes.

Q. What products does your company produce and sell? A. Besides bleach?

Q. Yes, sir. A. Liquid starch, ammonia, and bluing.

Q. Are all these products liquid? A. Yes.

Q. Does your company produce and sell any industrial or commercial bleach? A. No.

Q. Now, what product locations do you have for liquid bleach, sir? A. You mean distribution?

Q. No, sir, production. Where is your liquid bleach produced? A. They are produced at plants in South Plainfield, New Jersey, Charlotte, North Carolina, Jacksonville, Florida,

(Tr. p. 2346)

Lisbon, Ohio.

Q. Are all of your other products produced at these various locations also? A. Yes.

Q. Is your liquid bleach a sodium hypochlorite solution? A. Yes.

Q. Is it a 5.25 solution? A. Yes.

Q. Does your company manufacture the bleach itself?

A. I can answer that—normally it is technical—but I can say Yes to that.

Q. All right, sir. Will you tell us now the sales area of your liquid bleach? A. They comprise Philadelphia,

Benjamin Kunin—Direct

Pittsburgh, the state of Florida, North Carolina, South Carolina,—did I mention Pittsburgh?

Q. Yes, sir.

Hearing Examiner Haycraft: You didn't mention New York City.

The Witness: Well, that is a private label operation. It has nothing to do with our brand.

Mr. Royall: What did he say?

The Witness: That is a private label operation.

Mr. Royall: Private label operation.

(Tr. p. 2347)

By Mr. Tincher:

Q. Now, in these areas that you have mentioned, sir, do you serve the rural areas between the metropolitan centers? A. No, not everywhere. The reason for that is that our advertising or promotion is—we only get support in the major markets and, therefore, they do not reach the rural areas to get the benefit of our advertising media, so that our major markets are those in the prime cities.

Q. And how does a liquid bleach producer reach the rural areas? By what media? A. By local advertising.

Q. All right, sir. Now, does your liquid bleach sell in the Southern part of the country or just selected areas?

A. Well, only in the areas that I have just mentioned. And they, of course, I presume would be termed selected, such as Florida, Philadelphia, Pittsburgh, North and South Carolina.

Q. And is there any reason, sir for not selling in the entire South rather than just the Carolinas and the state of Florida? A. Well, the principal reason is, of course,

that we don't have the financial means to expand into other markets. Financial means, I mean by advertising and promotional support.

Benjamin Kunin—Direct

A brand product must be pre-sold to the consumer and that takes considerable finance to do that so that naturally we just stay within the markets where we can support it

(Tr. p. 2348)

financially.

Q. Now, are your company's other products sold in the same general sales area as your liquid bleaches? A. Yes.

Q. What sort of a sales organization does your company have? A. Food brokers, principally, with the exception of Philadelphia where we operate direct through our own sales office.

Q. And why is it you operate direct in Philadelphia, sir? A. Well, we feel it is home ground and we can use it for a testing ground whenever we have to test promotions and we feel the broker who has many other principals to represent can't devote the time to it, so we use Philadelphia as a moving ground to sell direct and through that we are able to determine how we could proceed in other markets.

Q. And is there any reason why you use brokers in other markets rather than the direct salesmen as you do in Philadelphia? A. It is more economical. They have retail staffs to do the work and for us to hire retail men in each market with a sales representative, why, it would be uneconomical and, of course, unprofitable.

.....
(Tr. p. 2349)
.....

Q. Now, is your liquid bleach sold freight pre-paid to the customer? A. Yes.

Q. Is there any limit caused by any factor as to how far you can sell liquid bleach from your point of production?

Benjamin Kunin—Direct

A. Well, of course, the freight factor is very important and we try to confine our area within, well, a maximum of 250 miles. We make exceptions in some areas where we have no relief and that is from Jacksonville to Miami, which is approximately 360 miles, we deliver. That is the exception we make where we deliver in the larger area than the 250-mile. It can be affordable to ship.

Q. And what is the reason for the exception there, sir?

A. It has an old history for, well, back 50 or 60 years ago our predecessor was very fond of the Miami area and concentrated in the Miami area and developed that business to such an extent that it is desirable to keep it. And, naturally, of course, and again I am just speaking in the context of a layman when I talk about plants, naturally we can't have plants everywhere; so, since our plant has been in Jacksonville and we have that business in Miami, why, we make the exception and ship to that area.

Q. Now, what other liquid bleach producers sell liquid bleach

(Tr. p. 2350)

in the various areas where you sell? A. Of course, Clorox and Roman Cleanser. That is about it.

Q. Is that in the entire area or were you just speaking of Philadelphia? A. Yes.

Q. These other bleaches that you have mentioned, sir, are they a 5.25 sodium hypochlorite solution, too? A. Yes.

Q. Do you have a principal competitor in your liquid bleach business, sir? A. Well, Clorox is one and then in the areas, of course, there are local factors. The principal competitor in Florida would be—another principal competitor would be Roman Cleanser.

In Philadelphia it is principally Clorox and that is all. In Pittsburgh, it is Clorox and Austin.

Benjamin Kunin—Direct

Q. Where is the Austin Company? A. Pittsburgh.

* * * * *

(Tr. p. 2351)

* * * * *

Q. Do you sit in on discussions as to what type of advertising will be used, how it will be used? A. Yes, I do.

Q. What has your company found to be the most effective media to sell liquid bleach? A. I wish I could have an answer for that. I would be a priceless consultant. We don't know. We just hope that through study and through what expenditure that we have that we strike the best medium and hope that it hits and it isn't always sure. So, we will test television one period and then

(Tr. p. 2352)

newspaper another period, and radio another period. There is no answer to that.

Q. Which medium is the most expensive for your company to use? A. Television.

Q. Has your company ever had a television program? A. No.

Q. Is there any reason for that? A. Well, it is very expensive.

Q. Let me ask you the same question with respect to radio. Have you ever had a program as distinguished from spots? A. No, and I can answer spots about radio very easily. You get more frequency than you do in, say, a 15 minute, hour or a half hour show, or you take 15 or 20 radio spots a week. You have more frequency, we think, therefore, by repeating the message more frequently. It is more apt to register. We prefer spots on radio rather than we do a show.

* * * * *

Benjamin Kunin—Direct

Q. Now, do you advertise in any magazines? A. No, with the exception of a local magazine such as "Every Woman," and that was only done in Florida.

* * * * *

(Tr. p. 2353)

* * * * *

Q. Now, what methods of promotion does your company use in selling this liquid bleach? A. Well, that depends on the extenuating circumstances. We will either use a—we principally try to aim at the consumer. We do nothing to give anything to the grocer, but if we put a case on of one free with ten, we try to reflect it to the consumer or else a two cents a label off the quart bottle.

Q. And why is it that you aim at the consumer, sir, rather than the grocer directly? A. Since we are not in the position—well, the grocer is only interested in what the consumer buys. He is not concerned with a give-a-way for himself. We feel that we found in our experience that the grocer is only a factor in

(Tr. p. 2354)

in channeling your merchandise, but the consumer is the most important part of your business who purchases the merchandise; so, we aim at the consumer.

Q. Does your company give cents off on labels or coupons for reduced prices? A. We give cents off—well, we inaugurated a cents off program this year and that is two cents off on the quart size bleach, three cents off on the half label.

Q. Why was that program inaugurated, sir?

(Tr. p. 2355)

A. We felt since we are not in the position to have a multiple media advertising campaign which would comprise radio, newspaper and television, and we could only

Benjamin Kunin—Direct

limit ourselves, that the next best thing is to try to appeal to the consumer through a price inducement.

Now, how successful that will be we don't know, we are just trying it out now.

Q. Is that in your entire area or—— A. No, we are doing this in Florida for the present. We don't know whether we will do it here or elsewhere, but for the present we are doing it in Florida.

Q. Now, is the Hood Chemical Company, Inc., affiliated with or a subsidiary of any other corporation? A. No, not to my knowledge.

Q. And does your company own any or control any other liquid bleach producer? A. No.

Q. Now, sir, are you familiar with the price structure in retail stores in your selling areas for liquid bleach? A. Yes, they vary. Do you want specifically the price?

Q. Yes, if you could give us a general picture of the price structure. A. In Philadelphia it is 18 cents for a quart bottle, I can't tell you the half gallon, I'm not familiar with that. That is the thing that we seem to watch—the price barometer.

(Tr. p. 2356)

In Pittsburgh it's 19 cents a bottle. And in Florida it's 18 cents.

Q. Now, whose prices are these, sir? What brand? A. Hood 33 bleach.

Q. Now, what are the prices—these are all quarts I take it. A. Yes.

Q. And what are the prices in the same areas for the other liquid bleaches in the retail stores generally speaking? A. Well, you mean—well, Clorox in Philadelphia is 20 cents a quart, it's 20 cents in Pittsburgh, it's 19 cents in Florida.

Benjamin Kunin—Direct

Q. How about Roman Cleanser, sir? A. The Roman Cleanser is 15 cents in Florida and that's all in our area we are concerned with.

Q. Are there any other—— A. Austin Bleach in Pittsburgh is 17 cents.

Q. Are there also private label brands sold throughout your area? A. Yes.

Q. And do they sell higher or lower than these prices? A. Lower.

Q. Now, the prices that you have given us, sir, they are current prices? A. Yes.

(Tr. p. 2357)

Q. Has there been any change within the last few years in those prices with respect to the price differentials between the various brands? In other words, I don't mean are the prices still exactly the same as they were, but is the differential between the various prices approximately the same as it has been in the past? A. It's about the same.

(Tr. p. 2359)

Q. All right, sir; I think the pending question was whether or not your company has any cooperative advertising allowance to your customers. A. Yes, on bleach, six cents a case.

Q. And how long has that been true, sir? A. Well, we went into that about a year ago.

Q. Why are you using that particular plan, sir? A. Well, competitors have put into their policy a six cents per case cooperative allowance without proof of performance and, so, naturally, we were compelled to go along.

Benjamin Kunin—Direct

(Tr. p. 2360)

Q. Who are those competitors that you speak of, sir?

A. Clorox, Roman Cleanser, and I presume Austin. I don't know.

* * * * *

Q. Now, does this six cent plan require proof of advertising? A. No, it does not.

Q. Does your company make any allowances or expenditures for in-store promotions by retailers? A. No, we do not.

Q. Does your company receive any in-store promotions as a general rule? A. Not generally, but once in a while we are lucky and we get one.

Q. Excuse me, had you finished? A. By the good graces of a storekeeper who perhaps likes our salesman, but it isn't general.

Q. Now, is an in-store promotion an aid to the sale of liquid bleach? A. It certainly is.

Q. And can you tell us just briefly why that is, sir? A. Well, it receives a distinctive display and therefore it has very conspicuous attention. If they put up a 25 case display, naturally the traffic that is moving around that display

(Tr. p. 2361)

and it attracts attention and as a result it increases the sale.

Hearing Examiner Haycraft: Where are these displays usually placed?

The Witness: They call them, in the food store term it's called end displays. It's at the end of some section.

* * * * *

Q. Mr. Kunin, what factors does your company consider in setting the prices it charges for its liquid bleaches?

Benjamin Kunin—Direct.

A. Well, now, I don't know whether you are getting into my field now when you talk about setting prices.

Hearing Examiner Haycraft: Who sets the prices, let's find out first.

The Witness: The prices are set by the cost. The Cost Department gets into it and they, of course, go through the various channels of what the glass costs and the ingredients cost, and the price is arrived at. I do not set it.

By Mr. Tincher:

Q. Are you consulted at all in establishing that?

(Tr. p. 2362)

A. Yes.

Q. For what reason are you consulted? A. So that we have at least cognizance of what the market condition is and whether our price structure will have logic to put us in the competitive position with the market.

Q. All right, sir. And in that study is there a price leader in liquid bleach in your sales area? A. A price leader—

* * * * *

Q. Brand leader, excuse me, sir. A. Clorox by far dominates the bleach sales.

Q. Now, is there any chemical difference that you know of or any functional difference between your bleach and the other liquid bleaches sold in your sales area? A. Well, I wouldn't know about—I'll be specific. I wouldn't know about Clorox, but generally I would assume that there isn't any difference. The reason why I say Clorox, they have an electrolytical system and there may be a difference in Clorox.

Q. They have what, sir? A. An electrolytical—a method of producing their bleach.

Benjamin Kunin—Direct

(Tr. p. 2363)

There may be a difference. Whether it all adds up to 5 and a quarter and like all the rest of us I can't answer.

(Tr. p. 2365)

Q. What are the competitive tests in selling your household liquid bleach?

(Tr. p. 2366)

The Witness: That, of course, is contingent upon the advertising and the extent of the advertising that takes place in a market. Now naturally if a manufacturer can consistently advertise for 52 weeks and run a big line space in a newspaper every week at all territory levels, rural and what-not, and secondary markets, of course, that has the advantage of strengthening your market position.

Q. Does any liquid bleach producer so advertise in your sales area? A. Clorox considerably.

Q. Now, sir, what are the competitive tests or factors that face your company in obtaining shelf space for your products, liquid bleach?

The Witness: Well, shelf space is predicated upon the movement of the product. If the product has a pretty good movement, you will get ample shelf space. If the product is

(Tr. p. 2367)

slow, naturally your shelf space will be proportionate to its movement.

Benjamin Kunin—Direct

By Mr. Tinch:

Q. In turn, sir, what determines that movement? A. The consumer, advertising getting the consumer to move it off the shelf.

Q. Can you tell us, sir, just generally speaking, if possible and if not please indicate, but generally speaking, how many brands of liquid bleach grocery stores in your sales area carry on their shelves? A. Generally?

Q. Yes. A. Well, it would be a private label, two brands. I would say generally there would be about three bleaches.

Q. And what are those, generally? A. It depends on the market. Now, Florida, I can be specific; it would be Clorox, Roman Cleanser, and 33. In Pittsburgh, it would be Clorox, Austin, and 33. In Philadelphia, it is Clorox and 33.

Now I am giving you—there are one or two others, but I don't think you could term them as being factors.

Q. And why not, sir?

* * * * *

(Tr. p. 2368)

The Witness: They operate on a very limited basis.

* * * * *

Q. You say they are very limited, sir. Can you give us some general idea of how limited they are, whether they are purely local or just part of a state or—

* * * * *

The Witness: I will name one, Wonder Bleach, which is a little bleach operator and just sells to several agents in Philadelphia, principally private label,

* * * * *

Benjamin Kunin—Direct

By Mr. Tincher:

Q. Have you seen their brands any place other than Philadelphia? A. You see very little of it in Philadelphia. It is down now to purely a private label operation.

Q. And what does— A. One other organization, to be specific, is Suntex, and they recently were acquired by a new group—I don't know who they are; they are just starting. I only saw an ad in the local food paper, called the Food Trade News, where they are

(Tr. p. 2369)

contemplating advertising it and getting back into the market. That is why I couldn't give you anything on these other so-called bleach operators in Philadelphia.

Q. All right, sir. Now this class of operators we have just been talking about, where in the price structure, in the retail stores, does their bleach fit in? A. They would fit in the category of about 16 cents a quart bottle.

Q. And are their prices corresponding in the other sizes? A. Yes.

Q. Does promoting a liquid bleach, either through an off-price label or a coupon or any other way you would want to promote it, does that have any effect on the amount of shelf space or in-store promotions that the product being promoted will receive?

* * * * *

The Witness: Yes, it does, because the store feels that they have some inducement to stimulate impulse sales and they will give it more space.

* * * * *

(Tr. p. 2371)

* * * * *

Q. Now, can you tell us, sir, approximately what percentage of your liquid bleach is sold in grocery stores?

Neil A. MacDonald—Cross

A. I would say all of it. We have no other—are—do you mean such as department stores, drug stores and——

Q. Variety stores? A. That is about it, grocery stores, all of it.

* * * * *
(Tr. p. 2374)
* * * * *

Room 300
United States Customs House
Second and Chestnut Streets
Philadelphia, Pennsylvania
Wednesday, May 21, 1958

Met, pursuant to adjournment, at 10:00 o'clock a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *
(Tr. p. 2375)

PROCEEDINGS

* * * * *

Neil A. MasDonald

resumed the stand as a witness and, having been previously duly sworn, was further examined and testified as follows:

FURTHER CROSS EXAMINATION

By Mr. Royall:

* * * * *
(Tr. p. 2376)
* * * * *

Q. Now, has the company more than doubled its business since 1948?

* * * * *
(Tr. p. 2377)
* * * * *

Neil A. MacDonald—Cross

A. Well, I would have to refer to figures, but I would say it has approximately doubled its figures. I would say not quite doubled.

Q. There has been an increase, your figures show, ever since 1952, has there not? A. Yes.

Q. And that's been a steady growth and an accelerated growth, has it not, sir, in that period? A. Yes, it has.

Q. I will ask you to refer to the estimates for the years '54 to '57 and ask you if the sales haven't grown 29½ per cent in that three-year period.

* * * * *

A. The figures are here. I presume with a quick calculation that 29 percent is approximately right.

(Tr. p. 2378),

Q. That is right, sir. And are your sales still going up relatively?

* * * * *

Q. They went up to the time they have asked you about, haven't they? A. Yes, sir.

Q. Wasn't there a ten percent increase in 1956, approximately? A. Approximately ten, yes. Not quite ten.

Q. It was 9 and eight- or nine-tenths percent; something like that? A. Something like that, yes, sir.

* * * * *

(Tr. p. 2379)

* * * * *

Q. Has your business picked up in New York during this '52 to '57 period? A. Well—

Mr. Tincher: Mr. Examiner, I object to that on the further ground it was brought out by the testimony yesterday that the New York sales are strictly private bleach. It is not the Hood bleach.

Neil A. MacDonald—Cross

Hearing Examiner Haycraft: Mr. Tincher, we can't close our eyes to the fact that there is on the market a number of private brands of bleaches. It has been mentioned that the firm this witness represents has sold private brand bleach. Now, I am not going to change my ruling as to going into the details of that business, the volume of business that they may be doing, but at the same time I think there should

(Tr. p. 2380)

be facts developed as to whether or not the private brand bleach business is going on. I don't think we should close our eyes to it. It is there. How much of it there is, I don't know. I think you would be in a better position to let the record show how much there is, generally speaking, than it would be to try to close it off, because it is there and it is a competitive factor in the market. You can't get away from it.

The objection is overruled. I am going to let him develop.

By Mr. Royall:

Q. Let me start and try to tie it in with what has been said.

You built a plant, I believe you testified—change of location—largely because of the increasing business in New York? A. That is right.

(Tr. p. 2381)

Q. Your net worth is something over a million dollars as of today? A. Yes, approximately. The figures again will show that.

Neil A. MacDonald—Cross

(Tr. p. 2382)

* * * * *

Q. In addition, Mr. MacDonald, do you at this time sell a brand of your own known as Beacon in addition to

33—

* * * * *

(Tr. p. 2383)

* * * * *

Q. That is not a private label is it? A. Well, it is and it isn't if such an answer is possible.

* * * * *

(Tr. p. 2387)

* * * * *

Q. Well, leaving that, sir—the figures you gave on total sales in the exhibit do not include private brands or Beacon, do they?

* * * * *

The Witness: They do include private brands.

By Mr. Royall:

Q. These figures do include private brands? A. Yes.

* * * * *

(Tr. p. 2389)

* * * * *

Q. Would it in any way embarrass you, Mr. Witness, or give information you would prefer not to be known to a competitor, for me to ask you exactly the nature of the Beacon bleach and to whom it is sold? If it would, I don't want to ask you. A. No, the nature and to whom it is sold wouldn't embarrass us. It is a brand that is owned by Hood and given to various chains as a private brand.

Q. Specific chains?

Hearing Examiner Haycraft: By private brands, you mean they don't sell to any other customer in that area?

Neil A. MacDonald—Cross

The Witness: That's right, sold to one chain in one city. It is not sold to anyone else in that location.

Hearing Examiner Haycraft: But you own the brand?

The Witness: We do.

* * * * *

(Tr. p. 2392)

* * * * *

By Mr. Royall:

Q. You don't spend advertising and promotion on private brands, do you? A. No, we don't.

* * * * *

Q. Would it embarrass you if I asked you whether you spent

(Tr. p. 2393)

any money on Beacon for advertising alone? A. We do not.

Q. You do spend some money on Beacon, on promotion, do you not, sir, a little? A. Yes, very little. We spend some on it.

Q. But a small amount?

* * * * *

(Tr. p. 2396)

* * * * *

Q. Let me ask you this—maybe you know it, and maybe I should ask him. If so, don't hesitate to tell me. Do you require, in whole or in part, proof of the expenditure of that six cents? A. We do.

(Tr. p. 2397)

Q. Now, in requiring proof, as a practical matter, that results in a smaller average payment than if you did not, does it not? A. Naturally, yes.

* * * * *

Neil A. MacDonald—Cross

(Tr. p. 2398)

Q. Do you know, would it be about half as costly, one way or the other, or 40 percent? A. If my recollection is right—and this is just from memory—it is slightly in excess of half.

(Tr. p. 2399)

Hearing Examiner Haycraft: Does he have to submit to you proof of such advertising?

The Witness: He submits proof of the ad, a page out of the paper, or—if you wish, I can explain the conflict in our testimony.

Hearing Examiner Haycraft: Go ahead.

The Witness: We require proof, that is our policy. But no matter what your policy is, there are exceptions, and some people use it in a way that they can't send us proof. And the other testimony was correct in part, and mine is correct in part. But we require proof on the greater percentage of our advertising. The policy is to require proof, and where we don't require proof, it is a small percentage, where we have to make exceptions.

Hearing Examiner Haycraft: Well now, when you say in excess of 50 percent that you save by requiring proof, just explain that. I don't understand that.

The Witness: Well, for instance, a man will buy so

(Tr. p. 2400)

many cases and he gets six cents a case allowance to use for advertising. Perhaps he doesn't have room in his ads or for some other reason he doesn't use that; therefore we can't require proof and we don't pay him. So that the

Neil A. MacDonald—Redirect

amount we pay out of the earned advertising credits amounts to slightly in excess of 50 percent of what is potential.

REDIRECT EXAMINATION

By Mr. Tinch:

(Tr. p. 2402)

Q. Now this six cents per case allowance that you mentioned, sir, is that included on Commission's exhibit 479 in the item designated as promotion? (Handing exhibit to witness.) A. No, it is designated in here. (Indicating.)

Q. Under B? A. It is in there, with the exception of the year 1955. You will notice that this is for 1955, that particular item, that year, is in here. (Indicating.)

Q. You are referring now to newspaper, for every year except 1955 and—— A. In 1955, the six cents a case is included in there.

Q. In promotion? A. That is right.

Q. Thank you. One final question, sir: Why does the Hood

(Tr. p. 2403)

Chemical Company require proof of advertising to earn the six cent allowance rather than just giving everybody six cents a case without any proof? A. Well, for economic reasons, I suppose. We can't afford to pay money for advertising and then not get a return on it. If we spend money for advertising, we want the advertising done.

Benjamin Kunin—Cross

Benjamin Kunin

was recalled as a witness on behalf of the Commission, and having been previously duly sworn, was examined and testified further as follows:

CROSS-EXAMINATION

By Mr. Royall:

Q. Mr. Kunin, you testified as to certain competitors of 33. Is Texise a competitor? A. Yes, sir.

Hearing Examiner Haycraft: Where is it? It doesn't do my much good if he doesn't say where it is.

The Witness: Greenville, South Carolina.

(Tr. p. 2404)

By Mr. Royall:

Q. Thrifty Bleach, which has recently entered the market in Philadelphia, is that a competitor? A. Potentially, they are.

Q. Do you sell in Savannah? A. No, sir.

Q. Have you tried to sell in Savannah? A. We did.

Q. Is Clo-White the principal factor there? A. Yes.

Q. Who makes that? A. Coastal Chemical Company.

Q. Do you do business in Baltimore? I don't believe you mentioned that, but I am curious. A. Yes, we do.

Q. Do you know whether the manufacture by one company of liquid bleach, liquid starch, ammonia and liquid bluing, as you manufacture it, is a normal grouping, following by a large part of the bleach industry? A. Yes.

• • • • •
(Tr. p. 2405)
• • • • •

Q. I believe that you testified Clorox is, over-all, the largest manufacturer of bleach, is that right, sir, that

Benjamin Kunin—Cross

Clorox is the largest? A. I don't recall saying that. I know they are, but I don't recall saying that.

Q. I thought he asked you that. When you said Clorox dominated, you meant the largest quantity, didn't you?

A. That is right.

* * * * *

(Tr. p. 2409)

* * * * *

Q. Now, you said something yesterday in answer to questions

(Tr. p. 2410)

of the complainant about Roman Cleanser coming into Florida. When was this? A. Well, approximately four years ago.

Q. Four years ago. And now when they came in, did they put on various advertising and promotion plans?

A. Yes, they did.

* * * * *

Q. And their competition got keener and keener, didn't it? A. Yes, it did.

Q. And after it became keen, you put on some price-off plans, didn't you? A. That is exactly right.

Q. Did you also give some free goods? A. No, when we—that has supplanted the free goods. We

(Tr. p. 2411)

thought we would try one-free-with-ten to combat. That didn't work; so, we gave a two cents off label.

Q. I understand. I didn't mean they were done simultaneously. You did one and then the other. A. That is right.

Q. And you considered that the normal way to meet that situation, didn't you? A. As far as were were concerned.

Benjamin Kunin—Cross

Q. You have used those same plans in other places where those situations arose? A. We haven't done that.

Q. Did you use some in Baltimore, to remind you? A. We had in Baltimore a free goods deal. Are you speaking specifically of something or just promotion? Up to two cents?

Q. In Baltimore I am speaking of a one-for-ten. A. Right; that is right.

Q. And in Cleveland did you have a concession to meet competition that enabled them to sell 33 Bleach for 13 cents a quart for a while and 28 cents a gallon? A. We don't market "33" in Cleveland.

Q. What? A. We don't market "33" in Cleveland.

Q. What do you market there? A. We have Beacon.

Q. Beacon?

(Tr. p. 2412)

A. Beacon.

Q. Yes, sir. But there was a price reduction in August of '57 in Cleveland or around that time, wasn't there?

A. I don't know whether to call it a price reduction. Our Beacon line is a secondary line; therefore, we have no promotion or anything connected with it; so, we pass the advantage on price.

* * * * *

Q. Do you recall that there was a period in 1955 and '56, to be exact, from October 1955 to April 1956, when "33" and Clorox sold at the same price?

Mr. Tincher: Is that retail?

(Tr. p. 2413)

By Mr. Royall:

Q. Sold by you at the same price? A. Both of us. You mean they were \$1.75 and we were the same. To the

Benjamin Kunin—Redirect

wholesaler. Are you talking about to the wholesaler or to the shelf level?

Q. What you got for it? A. When was that?

Q. Maybe this will refresh your recollection (showing document to the witness). A. That is correct.

Q. That is correct? A. Yes, sir.

Q. I believe that was the same as to half gallons and other sizes, wasn't it? A. Correct.

REDIRECT EXAMINATION

By Mr. Tincher:

Q. Now, you say you do not sell in Savannah, Georgia, and have not?

(Tr. p. 2414)

A. That is right.

Q. And that is where Clo-White is? A. That is right.

Q. Why haven't you sold in Savannah? A. First of all, we have a disadvantage from shipping from our Jacksonville plant and, therefore, it wouldn't be affordable to be in that market.

Hearing Examiner Haycraft: Where is the Clo-White?

The Witness: Savannah.

Hearing Examiner Haycraft: You would have to absorb the freight?

The Witness: Yes, sir.

By Mr. Tincher:

Q. What is the basis of your statement, sir, that Clo-White is the principal competitor or competition in Savannah? A. You mean in Savannah?

Benjamin Kunin—Redirect

Q. Yes, sir. A. That is public record. Public record by surveys, newspaper surveys, and that they do have the prime market in Savannah. That is my basis, by surveys.

* * * * *

(Tr. p. 2415)

* * * * *

Q. I see. Now, sir, you said, if I recall correctly, the question was something about whether it was normal for liquid bleach producers to produce ammonia and starch—was there another one, bluing? A. Bluing.

Q. Now, will you tell us what liquid bleach producers produce these four products? A. What I meant by normally is that those in the field like we are and it is kindred to what they do, bleach launders and cleans laundry and starch starches laundry, they are kindred, therefore, it would be more normal for them to be in that business. Now, we have one in Pittsburgh which is Austin; we have one in Philadelphia which is Thrifty. I only know what is within our sphere. Texise is another one.

Q. All these companies that you mentioned are producing all these products in liquid form in bottles, are they not? A. Yes.

Q. And that entire bottling operation can be conducted at one bottling plant, can it not? A. Yes, it can.

* * * * *

(Tr. p. 2416)

* * * * *

Q. Now, you testified about various promotions of the Roman Cleanser Company when they came into Florida approximately four years ago, and you testified about various promotions of your own company. Will you tell us, sir, why your own company has engaged in these pro-

Benjamin Kunin—Redirect

motions? A. Well, we were compelled to. Roman Cleanser came into the market and to get in, of course, they offered all sorts of inducements—low prices, sampling, and other merchandising devices, cooperative advertising far above the average—and we stood aside for a couple of years thinking that, well, we had the market well entrenched and, therefore, we wouldn't be too vulnerable. Well, we were mistaken. So, after about two years of getting a good rubbing, we finally became aroused and combatted it. That is the reason for our countering with our promotions.

Q. All right, sir. For how long a period did you counter with your promotions? A. We don't sustain it. This year will be the longest one. We are on a 60-day basis this year. In the past we would do it maybe just what we—in our jargon, I would say a one-shot deal. Normally a one-shot deal will run about anywhere from two weeks to 30 days.

Q. And why is this limitation, sir, if there is any reason? A. It is pure cost. I wish we had made some nice profit

(Tr. p. 2417)

on it and I would like to have it on for a year.

(Tr. p. 2419)

Q. My question is, what did you mean in that answer when you said that competition was keen? A. Let me see if my answer is correct. They resorted to low prices and free distribution in stores, in chain stores, and sampling house to house, coupon. I think that is pretty keen.

Q. Well, that is what I am trying to find out. What does "keen" mean? Does "keen" mean it is easier or

Benjamin Kunin—Redirect

harder to compete? A. Much tougher to compete against such competition, where you have give-a-ways, all the tools at every level. The

(Tr. p. 2420)

housewife, advertising and in-store.

Q. Was this Roman Cleanser campaign tied in with any other product? A. No, just bleach.

* * * * *

Hearing Examiner Haycraft: Are there any of those big manufacturers located in Miami?

The Witness: One.

(Tr. p. 2421)

Hearing Examiner Haycraft: Does it have a factory?

The Witness: Yes. Roman Cleanser just acquired one.

Hearing Examiner Haycraft: Just now?

The Witness: Just acquired one.

* * * * *

Mr. Tincher: There is one final thing before these witnesses leave, sir. I understand that we can stipulate that Commission's Exhibit 472, which reads "Total Net Sales of Liquid Bleach for Each Bottle Size, 1952 through 1957," that what is actually reflected is the fiscal years of the company for each of those years with the period in each case ending on August 31st, rather than December 31st.

* * * * *

(Tr. p. 2436)

* * * * *

Room 511-A
United States Court House
Foley Square
New York, New York
May 26, 1958

Alfred Olkin—Direct

Met, pursuant to notice, at 10:20 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 2437)

PROCEEDINGS

* * * * *

(Tr. p. 2439)

* * * * *

Alfred Olkin

was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

(Tr. p. 2440)

Hearing Examiner Haycraft: Give me your full name and address, please.

The Witness: Alfred Olkin, 850 Raleigh Lane.

* * * * *

DIRECT EXAMINATION

By Mr. Tinch:

Q. Mr. Olkin, what is your occupation, sir? A. I am a secretary and treasurer of the Rose-Lux Chemical Company.

* * * * *

Q. How long have you held that position? A. I have been treasurer since 1940 and secretary for about ten years.

Q. How long has your company been in business? A. Since 1932.

Q. What is the business activity of your company and what products does it have? A. We manufacture a

Alfred Olkin—Direct

line of household laundry products including bleach, ammonia, liquid starch, and so forth, that is sold through the grocery trade.

Q. Are these products all liquids?

(Tr. p. 2441)

A. All liquids, yes.

Q. Is your company a public corporation or a family type corporation? A. I would say a closely held corporation.

Q. How many stockholders are there? A. Just two.

Q. Who is the other stockholder? A. Mr. David Rosenberg.

Q. What is his position with the corporation? A. He is the President.

(Tr. p. 2442)

Q. Mr. Olkin, I hand you Commission's Exhibit 483 for identification and ask you to tell us what the figures thereon represent, who it was prepared by, and how it was prepared? A. They were prepared by me. They represent the sales of bleach from the year 1952 through 1957, and I arrived at my figure by figuring out the percentage of bleach shipments as against the others and took that percentage of our total sales.

Q. Will you tell us why you used that—

Mr. Royall: (Interposing) Wait a minute. Let me hear that last answer. Will you talk a little louder?

(Tr. p. 2443)

A. I said I figured the bleach shipments, what percentage they were of our total shipments of all products and applied that percentage to our sales figure for all products.

Alfred Olkin—Direct

We don't keep separate records of each individual product that we sell.

By Mr. Tinchér:

Q. Is there any other way that you have of computing your sales of liquid bleach or any other single product you have? A. You would have to follow the same pattern.

Q. Did you do that for each of the years involved there? A. I drew an average percentage for the six years involved.

* * * * *

Mr. Tinchér: As I understand, he has a six-year percentage and he has taken an average of all six years and applied to each individual year for the total of that year, for the sales for that year.

Hearing Examiner Haycraft: Is that correct?

The Witness: Yes.

Hearing Examiner Haycraft: I didn't understand you to say that. I thought you made your estimate for each year.

The Witness: Well, for the sake of argument, if

(Tr. p. 2444)

in '52 it was——

Mr. Royall: (Interposing) Objection. Objection to his statement, your Honor.

Hearing Examiner Haycraft: Overruled. He can make an explanation of how he figured it.

The Witness: If in 1952 it averaged, say for the sake of argument, 56 per cent and in 1953 it was 55 and in '54, it might have been 54, I averaged the whole thing up. I took the average of each year, divided it by six.

Hearing Examiner Haycraft: What is the figure, from that you multiplied out to find out for the total—how did you figure for each year?

Alfred Olkin—Direct

The Witness: I took the gross sales for each year of all our products and multiplied it by this percentage figure.

Hearing Examiner Haycraft: Which was an average, rather than exact?

The Witness: It was—the variation was very slight. It wasn't more than one per cent in any one year.

* * * * *

(Tr. p. 2446)

Mr. Tincher: I wonder if you could take my pen and write on the document and initial it what percentage of total sales these sales represent, and this document is in camera?

The Witness: Yes, sir, I can do that.

By Mr. Tincher:

Q. Did you initial it, sir? A. Yes.

Q. Now that you have written down that figure, in any one of these six years, or during each of these six years, what was the greatest variation from that average figure which you have? A. One percent.

* * * * *

Mr. Tincher: I offer Commission's Exhibit 483 for identification at this time, sir.

* * * * *

(Tr. p. 2447)

* * * * *

(The document referred to, heretofore marked for identification Commission's Exhibit 483, was received in evidence, in camera.)

* * * * *

Q. Is the liquid bleach as produced by your concern a household or an industrial type? A. Household.

Alfred Olkin—Direct

Q. Where is your liquid bleach produced? A. At a plant at 301 Belmont Avenue, Brooklyn.

Q. Do you have more than one production plant? A. No.

(Tr. p. 2448)

Q. Are all of your products produced at the same plant where the liquid bleach is? A. That's right.

Q. Would you tell us, sir, the sales area for your liquid bleach? A. Well, it's what is known as metropolitan New York.

Q. How far out does that reach, sir, as you experience it? A. That would take in the five boroughs, Westchester County, Bergen County in New Jersey and Fairfield County in Connecticut.

Q. Do you have the same sales area for your other products? A. Yes.

Q. Is your liquid bleach sold to the same customers under the same outlets as your other products? A. Yes.

Q. Is your liquid bleach advertised? A. Yes.

Q. What media do you use in advertising it? A. We use newspapers, trade papers, radio and television.

Q. What type of advertising have you found most effective to advertise liquid bleach? A. It's very hard to say. I guess television would be about the most effective one, if we could afford to pay for prime time—

Hearing Examiner Haycraft: (Interposing) Pay for

(Tr. p. 2449)

what?

The Witness: What they call prime time on television, which is from seven to ten o'clock in the evening. The rates are so high that we can't afford to buy it. So ours are daily time programs.

.

Alfred Olkin—Direct

By Mr. Tinch:

Q. Do you have any promotions for your liquid bleach, and by that I mean any special type of price reducing or coupons or anything that will reach the housewife? A. We never did any couponing and the only type of promotion we at times use is that we will have a two cent off per bottle on the label.

Q. How long does that type of activity—— A. (Interposing) We generally run that anywheres from four to five weeks.

Q. Is there any reason for the selection of that particular time period? A. No. We generally do it when business becomes dull and we want to give it a shot in the arm.

Q. Does that type of activity increase the sale of your liquid bleach? A. It does.

(Tr. p. 2450)

* * * * *

Q. Do you grant your liquid bleach customers discounts for quantity purchases? A. No.

Q. Do you have any cooperative advertising allowance for your liquid bleach? A. No.

Q. Do you use such allowance on your other products?

(Tr. p. 2451)

A. No.

* * * * *

Q. What are the competitive tests that you must face in selling your liquid bleach?

* * * * *

A. Well, in order to sell our liquid bleach, we have got to be under the price of a bleach like Clorox because they are so extensively advertised and, consequently, so popular and very well known that if the price on our bleach was to

Alfred Olkin—Direct

be the same as theirs, I don't think any housewife would bother to pick ours up, so we have to manage to keep under their retail price. Also, we've got to be under the price to the grocery buyer and we have got to afford him a little better mark-up percentage-wise than he gets on Clorox to induce him to handle

(Tr. p. 2452)

it.

Q. In selling your liquid bleach, do you encounter any difficulty in obtaining shelf space? A. That's one of the main difficulties today because the grocery store will give the most shelf space to the item of which they sell the most and, consequently, bleach, in particular Clorox, will receive the largest amount of space, whereas ours being the cheapest outside of the private label, receive the least amount of space and we found that quite a handicap in our business.

(Tr. p. 2453)

Q. What do you as a liquid bleach producer do in an effort to obtain shelf space?

A. Well, as I said before, we afford the grocer a better mark-up percentage-wise to induce him to display our merchandise and sell it, and we run this two cents off per bottle, which is marked on the label once in a while and we hope that he will believe that he will sell more and consequently give us another row or two on a shelf.

(Tr. p. 2457)

Alfred Olkin—Direct

Q. I will hand you Commission's Exhibits 485 and 486, both for identification, and ask you to tell us what these are and how they were used and who they were sent to?

A. This is a form letter that we sent out to our customers, notifying them of an increase in price due to increase in the cost of bottles, caps, labels and other factors entering into the manufacture of our product.

* * * * *

(Tr. p. 2458)

* * * * *

Q. Is your company's liquid bleach a sodium hypochlorite solution? A. Yes, sir.

Q. What per cent of the solution is that? A. 5 and a quarter.

Q. What is the remainder of the product? A. The remainder we term inert ingredients.

Q. I wonder if that means water, sir? A. More or less.

Q. Who else, when I say who else, I mean what other producers sell liquid bleach in the same sales area that you have for your liquid bleach?

(Tr. p. 2459)

A. We have, of course, the Clorox Company. There there is Dazzle.

* * * * *

A. There there is a Bonnie bleach. There is a Cleano and, of course, the chain store private labels.

Q. Who makes the Dazzle product, if you know? A. Prescott Company in Passaic, New Jersey.

Q. Do you know who makes the Cleano and the other type? A. The Bonnie is made by General Products Company, or the Bonnie Bleach Company. I don't know what they call themselves. And Cleano is—I don't know

Alfred Olkin—Direct

the name of their firm. They are somewheres in the Bronx.

Q. Do you meet much competition from all these bleaches or just how is the competition spread around as your company has found it? A. Well, our keenest competition has been Clorox. The others are concentrated in certain neighborhoods. Like, for instance, Cleano does the bulk of their business in the Italian neighborhoods and they are known more or less like the Italian traders. Also an outfit called—I can't think of their name. But they also deal, I'd say 85, 90% of their business was in the Italian trade. When it comes to the all-over picture, the competition that we feel is Clorox.

Q. Are you familiar with the labels of the various bleaches

(Tr. p. 2460)

that you have mentioned in the Metropolitan area? A. Oh, yes. I'd recognize them if I saw them.

Q. Are the other bleaches in the area also a five and a quarter per cent sodium hypochlorite solution?

Mr. Royall: Objection.

Hearing Examiner Haycraft: Sustained.

By Mr. Tincher:

Q. Let me ask you of your own personal knowledge if there is any difference between the bleach your company manufactures and the other bleaches sold in this area?

Hearing Examiner Haycraft: You haven't laid any foundation for that. You can't prove it quite that easy.

Mr. Tincher: I am not seeking to prove quality, sir, and exact—

Hearing Examiner Haycraft: (Interposing) You can't prove that these other bleaches are the same as his without showing that he made some chemical analysis. If he has made a chemical analysis—

Alfred Olkin—Direct

Mr. Royall: (Interposing) Your Honor, if they will give us the names of the bleaches, we might stipulate—

Hearing Examiner Haycraft: He has given you the names.

Mr. Royall: No, not all of them. If he gave us the names of all the bleaches, agree on the names of all the bleaches sold here, we might stipulate on those that we think

(Tr. p. 2461)

are the same, but we wouldn't agree to the evidence offered now. We have object to it.

Q. What percentage of your company's liquid bleach is sold in grocery stores, sir? A. Practically a hundred per cent.

Q. Do you have any idea what per cent of your company's liquid bleach sales are sold in chain stores as contrasted to independent stores? A. It would be about 60%.

Q. Would you explain to us as briefly as possible how your company distributes its liquid bleaches? In other words,

(Tr. p. 2462)

how you get it from your plant to your customer? A. Well, we hire trucks to deliver it.

Hearing Examiner Haycraft: How do you get the order?

The Witness: We employ salesmen and brokers.

By Mr. Tincher:

Q. They take the orders? A. They solicit the orders. They send the orders into our office and it's then—our

Alfred Olkin—Direct

office and our plant are in the same building and it's then shipped from the plant by truck to the various warehouses as designated on the order.

Q. Does your company pay the trucking charges involved in these shipments? A. Yes, we do.

* * * * *

(Tr. p. 2465)

* * * * *

Q. Can you tell us, sir, in the advertising that you do have your liquid bleaches, is your advertising sufficiently large enough for you to receive any discount rates?

(Tr. p. 2466)

A. No.

Q. Do you have any radio or TV programs as distinguished from just a spot announcement? A. Just a spot. No programs.

Q. Does your company use any banners or pennants or window bolsters for the sale of its products? A. No, we do not.

Q. Does your company have any special promotions in the fall or in the spring for the liquid bleach product? A. No. We don't.

Q. In this area that you sell in, in what section of the grocery store are liquid bleaches generally found? A. Well, as a rule, they are on the bottom shelf, I'd say in the least prominent part of the store.

Q. Well, is there a name to the section they are in? A. It's in a section called soaps, detergents and et cetera.

* * * * *

(Tr. p. 2467)

* * * * *

Q. Now, from 1952 up to the present time, sir, has your company considered expanding its sales territory beyond

Alfred Olkin—Direct

the Metropolitan New York area? A. Yes. We have gone into it a number of times, but we have always found it impractical due to the cost of trucking or freight of our product. It's packed in glass which makes it heavy. Due to the fact it's packed in glass, it takes a pretty high freight rate, and we just couldn't compete with any local product unless you wanted to go in and saturate the market with advertising, which we felt we couldn't afford to do.

Q. When you mentioned that because it's glass you have to pay a high freight, would you explain what the situation is on that? Why you have to pay a high freight cost because it's glass? A. Because, it is seldom that you ship a carload of glass bottles containing anything, that the railroad company doesn't get a claim for damage because there is bound to be some breakage. Of course, the railroad companies would know best why they want more for glass.

Q. Are you familiar, sir, with the prices on retail grocery shelves of liquid bleaches in your sales area? A. Yes, I am.

(Tr. p. 2468)

Q. Could you give us as briefly as possible, a general idea of what the various brands of liquid bleach sell for on the retail shelves? A. Of course, they do vary from store to store, but the popular price for Clorox at the present time is 19 cents a bottle. For the quart size. Dazzle is the same price, 19 cents. Ours sells for 17 cents. I haven't come across the other two brands mentioned as Cleano because they are in very few sections. They are not wide spread over the city. I really don't know what they retail for.

Hearing Examiner Haycraft: How about the private brands?

Alfred Olkin—Direct

The Witness: The private brands retail for 15.

By Mr. Tincher:

Q. Now, this price set up that you have given us on the quart, sir, proportionately speaking, does the same situation prevail on the half gallons and the gallons and the pints? A. When it comes to the half gallons, the difference on the price would be practically twice what it is on the quart. It is a bigger package and it is only packed six bottles to a carton, whereas the quarts are packed twelve.

When it comes to the gallons, the price in money would be still higher because they only come four to a carton, and they are selling the woman four quarts. So that for the sake of argument, the difference between our price and Clorox's

(Tr. p. 2469)

price on the quarts is 2 cents. It would be approximately 4 cents on the half gallons and it might be 6 or 7 cents on the gallons.

Q. Is your company producing liquid bleach at full capacity? A. No, we are not.

* * * * *

Q. Can you tell us, sir, what per cent of your capacity you are producing at? A. Well, it's something I never tried to figure out before, but we only run one shift, that is, an 8-hour day, whereas we could run sixteen hours. You could even run all around the clock on the same machinery. We don't even run our equipment for a full forty hours. We probably may run it for 25 or 30 hours during the week.

Q. Have the costs to your company of producing and selling liquid bleach increased since 1952? A. Oh, yes. It's gone up quite a bit.

Alfred Olkin—Cross

Q. Have all of these costs been passed on to the customer by your company?

(Tr. p. 2470)

A. No. Not all. We were compelled to absorb some of them because we could only raise our price if Clorox raised theirs. I don't think anybody in our business would have the nerve to raise the price unless Clorox did.

* * * * *

Q. Mr. Olkin, are you familiar with the fact that on or about August 1, 1957, the Procter & Gamble Company of Cincinnati purchased the Clorox Chemical Company?

A. Yes, sir, I am.

Q. Are you familiar with the product line and the activities of the Procter & Gamble Company? A. To a great extent.

Q. What effect, if any, will the acquisition by Procter & Gamble of Clorox Chemical have on the business of Rose-Lux Corporation?

* * * * *

(Tr. p. 2471).

* * * * *

A. Well, it's bound to hurt our business and it's bound to decrease our sales.

* * * * *

(Tr. p. 2475)

* * * * *

Alfred Olkin

resumed the stand and testified further as follows:

CROSS EXAMINATION

By Mr. Royall:

Q. Mr. Olkin, previously, this morning, you gave figures, which are in the record subject to possible motion to strike.

Alfred Olcin—Cross

They did not include private brands, did they, private labels? A. The figures?

Q. The figures you gave did not include private labels?

A. They did include private labels.

Q. The figures you gave this morning? A. Yes.

Q. How much? I don't want you to give any figures that are secret, but can you give us what part of that was private label?

(Tr. p. 2476)

A. I'd say approximately 5%.

(Tr. p. 2477)

Q. I hand you a list of what purports to be 17 private label bleaches sold in your area and ask you if this list directly represents private label bleaches sold in your area?

(Tr. p. 2478)

Hearing Examiner Haycraft: Refreshing your recollection from the exhibit which he handed you, you may testify as to the private brand that you are familiar with and where they are sold and by whom.

A. The associated label is sold in Metropolitan New York. United is sold in Metropolitan New York. Grisdale is sold, their stores are confined to Bronx and Manhattan. Hill

(Tr. p. 2479)

Bright is out in, mostly in Nassau County, Long Island. Kings is sold in Northern New Jersey. Plus is handled

Alfred Olkin—Cross

by a jobber. I don't know just exactly how far it gets around. White Dove is sold by Grand Union, and they have stores all through Metropolitan New York. Seamon Brothers' So White is also a jobber. I don't know how far they get around. Bright Sail, they are all throughout the area. Sally Shopwell, they are concentrated mostly in Long Island and the Bronx and in Manhattan. Key Food Stores is a cooperative. I think they have, their members are in Brooklyn and Long Island.

* * * * *

(Tr. p. 2483)

* * * * *

Q. Mr. Olkin, in addition to the promotions that you outlined this morning, is it true that during the spring of 1957 that you had a plan where in the case of purchase of two separate, one-hundred-case shipments from you, that you gave a transistor radio or 8 millimeter camera? A. That's a promotion we had with the independent retail stores and some of the others, provided they took 200 cases of goods in one delivery.

(Tr. p. 2484)

* * * * *

Q. Did you in the spring of '57 also give a \$50 premium certificate to the winning Bohack manager? A. Yes, that's true.

Q. Did you in that same general period give varying premiums to managers who sold from 25 up to 150 cases?

A. From 30 up.

Q. 30 up to 150 cases? A. Yes.

* * * * *

(Tr. p. 2486)

* * * * *

Alfred Olkin—Cross

Q. Mr. Olkin, I believe you testified this morning that you had no discount system, is that correct? A. That's right.

Q. Is it not a fact that in the case of a small grocer buying a small volume, say 25 cases or less, that you charge him an added amount per case? A. No. The basic price is the price that the small grocer pays. Then the only thing we have is it's expensive to handle shipments under 25 cases so that we permit a nickel a case off the regular price for anybody that takes 25 cases in one delivery.

* * * * *

(Tr. p. 2487)

* * * * *

Q. Your company started with a paid-in capital of only a few hundred dollars, didn't they?

Mr. Tincher: I object to that, sir.

Hearing Examiner Haycraft: Sustained.

By Mr. Royall:

Q. And it is now worth over \$400,000?

Hearing Examiner Haycraft: I will let him answer that question.

By Mr. Royall:

Q. It is now worth over \$400,000? A. That's right.

Q. And a good deal more than 400,000, isn't it? A.

That all depends on your interpretation of a good deal.

Q. How much is it worth?

* * * * *

A. I don't care to divulge exactly what our company is worth.

Q. Is it worth a million dollars? A. I said I don't care to divulge what it's worth.

Alfred Olkin—Cross

Q. Is it worth two million dollars?

(Tr. p. 2488)

* * * * *

A. No, it's not worth two million dollars.

Hearing Examiner Haycraft: Somewhere between 400,000 and two million.

* * * * *

(Tr. p. 2503)

* * * * *

Room 511-A
United States Court House
Foley Square
New York, New York
May 27, 1958

Met, pursuant to adjournment, at 9:45 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 2504)

PROCEEDINGS

* * * * *

(Tr. p. 2510)

* * * * *

Vincent Rinaldi

was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

(Tr. p. 2511)

Hearing Examiner Haycraft: Give me your full name and address?

The Witness: Vincent Rinaldi.

* * * * *

Vincent Rinaldi—Direct

DIRECT EXAMINATION

By Mr. Deveny:

Q. Mr. Rinaldi, could you tell us what company you are connected with? **A. I am connected with the No-Worry Chemical Company.**

Q. What is your position in that company, sir? **A. I am president.**

Q. What business is the company engaged in? **A. We make bleach.**

Q. Do you make any other products, other than bleach?
A. No, sir. We buy other products.

Q. The other products that you buy, sir, what are they?
A. We buy the ammonia and liquid starch. We get that packed.

Q. Could you tell us, sir, approximately how much of your business is liquid bleach? **A. It's about 2500 to 3000 cases a month.**

Q. About how much of your business would be the starch and ammonia sales? **A. Ammonia sales, say about 300 cases a month.**

Q. Do you have any industrial bleach?

(Tr. p. 2512)

A. No.

Q. Any industrial or commercial bleach? **A. No.**

Q. Where do you manufacture your bleach? **A. 4143 Manufacturer's Place, Newark.**

Q. Is that the only place? **A. That's the only place**

Q. What area do you sell your bleach in? **A. Essex County and Hudson County.**

Q. Of New Jersey? **A. New Jersey.**

Q. Is that true for your other products as well as the bleach sales? **A. Yes, sir.**

Vincent Rinaldi—Direct

Q. Do you sell all of your products to the same customers? A. Yes, sir.

Q. How do you sell your bleach? Is that by—what method of sales do you use? A. We go to the retail stores and we sell.

Q. Do you have salesmen? A. Yes, sir. We have a salesman out and he goes out and gets the order and we deliver it.

Q. You use your own delivery methods. A. Yes, sir. We use our own truck.

Q. How many salesmen do you have?

(Tr. p. 2513)

A. I have two.

Q. Do you advertise your liquid bleach? A. No, sir.

Q. Why don't you advertise? A. Can't afford it.

* * * * *

Q. Do you promote your liquid bleach by any means, any kind of offers—

Hearing Examiner Haycraft: (Interposing) You mean promote the sale?

Mr. Deveny: Promote the sales, yes, sir.

A. Yes, we do sometimes.

By Mr. Deveny:

Q. What would that be? A. Well, we give them a deal, one free with ten.

Q. Do you do anything else other than that? A. That's all.

Q. Why do you give the one free with ten? A. Well, the other competitors do the same thing so we have to follow suit.

Q. Do you have any quantity discount on your bleach to your customers?

Vincent Rinaldi—Direct

(Tr. p. 2514)

A. No.

Q. Do you have any advertising allowance on your liquid bleach? A. No, sir.

Q. Why is that, sir? A. Because we can't afford it because if we give them one free with ten, we can't give them any more.

* * * * *

Q. What competitive factor determines whether you sell your bleach to your customers or not

* * * * *

A. I don't get you.

Hearing Examiner Haycraft: What he means is, what do you have to do to sell? In other words, do you meet the price of your competitor, do you sell below, do you sell above?

The Witness: Yes, we have to meet the price if we want to get into the stores.

By Mr. Deveny:

(Tr. p. 2515)

Q. Whose price do you have to meet? A. We have to meet Rose-X and sometimes we have to meet in with Dazzle.

Q. When you say you have to meet it, does that mean you have to go above it, right at it, or below it? A. Some of them will take it from us if we meet the price. If we meet the price, they will take it from us.

Q. Are you ever prices higher than Rose-X? A. No. Just five cents less. They just raised theirs and we didn't know it.

Q. Where is your price in relation to Dazzle? A. Well, ours is \$1.55 and theirs is about \$1.80.

Vincent Rinaldi—Direct

Q. How about Clorox? A. Clorox is about \$1.90, \$1.90.

Hearing Examiner Haycraft: For what size?

The Witness: I am only speaking for quarts. I wouldn't know about the others.

Hearing Examiner Haycraft: That's a case?

The Witness: A case, yes, sir.

By Mr. Deveny:

Q. Do you produce a dry or a powdered bleach? A. No, sir.

Q. Can you give us an idea, sir, how much your freight would cost you, how much your delivery charge would be per case? Do you have an idea?

(Tr. p. 2516)

A. It costs about ten cents a case.

Q. Does that limit your sales area by any area? In other words, does that put a limit on your sales territory? A. Yes. Just the metropolitan area.

Hearing Examiner Haycraft: Metropolitan what, Newark?

The Witness: Even in New York too, if we had business.

Q. Do you sell in New York? A. No, sir.

Q. What's your brand name, sir, that you sell the bleach under? A. No-Worry. No-Worry Bleach.

Q. What's the brand name for the ammonia and starch?

A. The same, No-Worry.

Q. What is the composition of your bleach, what is it made out of? A. Chlorine and caustic.

Q. Would that be what is referred to as sodium hypochlorite? A. We make five and a quarter.

Q. Does your bleach have anything unique about it or any special quality that other bleaches might not have?

Vincent Rinaldi—Direct

A. Well, we have different words on them, different direction how to use it.

Q. I mean the bleach itself, what's in the bottle?

(Tr. p. 2517)

A. Liquid chlorine—I call it bleach, you know. Sodium hypochlorite.

Q. Is that any different from any of your competitor's bleaches? A. Not that I think so. The same thing.

Q. Could you tell us, sir, what type of customers, what type of stores do you sell to? A. I sell to independent stores.

Q. Do you sell to any chains? A. Just one. Acme Stores in Carney, New Jersey.

Q. Have you tried to sell to other chains, other than Acme? A. Yes, sir.

Q. What were the results?

* * * * *

A. They don't want to handle ours. They said they got Clorox; they got their own; they got Dazzle. They have no room for me.

By Mr. Deveny:

Q. Tell me, sir, how much approximately do you sell to the Acme store in Carney, do you have an idea? A. About 250 a week.

Q. Would that be dollars or cases? A. No, 250 cases a week.

Q. Would the balance of your sales be to these other stores? A. The independent stores, yes.

(Tr. p. 2518)

Q. Do you have a principal competitor in your sales area of bleach? A. Well, we have this private brand that they are pushing around.

Vincent Rinaldi—Direct

Q. Other than the private brand, is there any other principal competitor of yours? A. No.

Q. Who are some of the companies you compete with, some of the brands? A. Some of the brands? Dazzle and Clorox.

* * * * *

Q. Is your price on your bleach a delivered price? A. Yes, sir.

* * * * *

(Tr. p. 2522)

* * * * *

Q. Do you attempt to get grocery shelf space for your bleach? A. Yes.

Q. How do you attempt to get that, sir? A. I just can't get it. I am trying to get it, get the big stores. I only got the small stores. That's the only shelf I got.

* * * * *

(Tr. p. 2523)

* * * * *

Mr. Deveny: We are looking at the general market situation.

Hearing Examiner Haycraft: Yes, but the market situation I am interested in is the market situation from the time of the acquisition, and he has testified to that. It's not going to help us decide whether the violation of law going on according to this acquisition is to have a witness say back many years ago he used to sell to these other stores and now he doesn't. What kind of a finding do you want me to make on that?

Mr. Deveny: Well, your Honor, to answer your question, this gets back to our basic contention that we are entitled to look at the market prior to the acquisition and subsequent to the acquisition. I am just trying to get some

Vincent Rinaldi—Direct

market information prior to the acquisition with this question.

By Mr. Deveny:

(Tr. p. 2524)

Q. Mr. Rinaldi, does advertising and promotion of bleach have any effect upon the sales of it? A. Yes, sir.

* * * * *

(Tr. p. 2527)

* * * * *

Q. Have you ever considered expanding your sales territory? A. I tried to.

Q. What would that involve? A. That involved money.

Q. Have you expanded? A. No, sir.

Hearing Examiner Haycraft: You mean you sold in the same area all these years, never changed any?

The Witness: That's right.

By Mr. Deveny:

(Tr. p. 2528)

Q. Do you have any printed forms or any mimeographed letters that show the prices of your bleach by case? A. No.

Q. Do you know the prices yourself? A. Yes, sir.

Q. I think you have told us the quart price? A. Yes.

Q. Could you tell us the gallon and the half-gallon—

A. (Interposing) Do you want to know the price?

Q. Yes. A. Quarts, \$1.55; half-gallons, \$1.50; gallons, \$1.60; and liquid starch, \$1.80.

Q. No, sir. We just want the liquid bleach. A. All right.

Q. Do you have any idea how your retail price on the shelf compares with Clorox, Dazzle, Rose-X and private

Vincent Rinaldi—Direct

labels? A. Private labels are much cheaper, but Clorox and Dazzle are a little higher than me on the prices.

Q. On your quarts, sir, do you have an idea what the retail price of you— A. (Interposing) They sell around 18 cents.

* * * * *

(Tr. p. 2529)

Q. Well, let me ask you this, sir. Are you producing bleach every day? A. No, sir.

Q. Do you have an idea of about how many days a week you would be producing? A. Well, I produce about two or three times a week. That's all.

* * * * *

(Tr. p. 2530)

* * * * *

Q. How long has your company been producing liquid bleaches? A. About 35 years.

Q. Let me ask you this, sir. From 1952 through the date, now, what's been your sales picture? Has it been up, down, or— A. (Interposing) No, it's been going down all the time.

Q. Are you familiar with the fact, sir, that Procter & Gamble Company acquired the Clorox Chemical Company? A. Yes, sir.

Q. What effect will that have on your business?

* * * * *

A. Well, I don't think—if they are going to go out and put deals on, I don't think we are going to last any longer than we have lasted now.

* * * * *

(Tr. p. 2531)

* * * * *

Vincent Rinaldi—Direct

Q. Before Clorox was bought by P & G, was there competition based on any deals?

A. No, sir.

Q. What type of competition did Clorox have before—

A. They never made any deals that I know.

(Tr. p. 2532)

Q. Of your sales, sir, what percent of those sales go to grocery stores as opposed to variety and drug and department stores?

Hearing Examiner Haycraft: He said grocery stores are all. He didn't say he sold to anything else.

Mr. Deveny: I wasn't clear on that, your Honor. Thank you.

Hearing Examiner Haycraft: Is that all you sell to?

The Witness: Yes, sir. All grocery stores.

(Tr. p. 2535)

Room 511-A
United States Court House
Foley Square
New York, New York

May 28, 1958

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

William A. Henkel—Direct

(Tr. p. 2536)

PROCEEDINGS

William A. Henkel

was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Hearing Examiner Haycraft: Will you state your full name and your residence address?

The Witness: William A. Henkel, 60 Winding Lane, Bloomfield, New Jersey.

DIRECT EXAMINATION

By Mr. Deveny:

Q. Could you tell us what company you are affiliated with? A. The J. L. Prescott Company.

Q. Where is that located? A. Passaic, New Jersey.

Q. What is your position with that company?

(Tr. p. 2537)

A. I am the assistant treasurer.

Q. How long have you held that position, sir? A. About 12 years.

Q. What do your duties comprise of in that position, sir? A. Well, I have complete charge of all the records.

(Tr. p. 2538)

Q. Mr. Henkel, I hand you Commission's Exhibit 491 for identification and ask you what that is? Could you tell us? A. This is a summary of cases of bleach, 1952 through 1957, with the sales value of those cases.

William A. Henkel—Direct

Q. Can you tell us, sir, was that prepared by you?

A. That was.

Q. Was that prepared from records of the company?

A. From the books and records of the company, yes.

* * * * *

Mr. Deveny: I offer Commission's Exhibit 491 in evidence to be taken in camera.

* * * * *

(Tr. p. 2539)

* * * * *

(The document referred to, heretofore marked for identification Commission's Exhibit 491, was received in evidence in camera.)

* * * * *

(Tr. p. 2542)

* * * * *

Q. Mr. Henkel, I hand you Commission's Exhibit 492 for identification and ask you if you will tell us what that is?

A. These are the selling prices of bleach for the period April 15 through the present time.

Hearing Examiner Haycraft: What year?

The Witness: 1954.

Hearing Examiner Haycraft: You mean those were in effect from time to time? The different prices indicate the price changes?

The Witness: That's right, sir.

By Mr. Deveny:

Q. Would you tell us about the balance of the exhibit?

A. It also includes the cost of glass and containers, which is the present cost.

Q. I notice there is more to the document after the cost. Would you tell us what that figure represents? A.

William A. Henkel—Direct

Freight item. It shows the amount of freight applicable to our bleach business.

* * * * *

(Tr. p. 2545)

* * * * *

Mr. Deveny: Your Honor, we offer Commission's Exhibit 492 and portions of the exhibit are confidential, as expressed by the witness, so—prior to the hearing, so we would like to offer it in camera.

* * * * *

(Tr. p. 2546)

* * * * *

(Document referred to, heretofore marked Commission's Exhibit 492 for identification, was received in evidence in camera.)

* * * * *

By Mr. Deveny:

Q. Mr. Henkel, I hand you Commission's Exhibit 493 for identification, and ask you if you can tell us what that is, sir? A. This is a summary of the advertising and promotional expenditures made during 1952 through 1957.

Q. Was that document prepared by yourself?

(Tr. p. 2547)

A. It was.

Q. From what—— A. (Interposing) From the books and records of our company.

* * * * *

Mr. Deveny: We will offer 493 at this time,

(Tr. p. 2548)

your Honor, in camera on the basis of the witness' testimony.

* * * * *

William A. Henkel—Cross

(Document referred to, heretofore marked Commission's Exhibit 493 for identification, was received in evidence in camera.)

By Mr. Deveny:

Q. Mr. Henkel, the Exhibits 491, 492 and 493, would the figures on those exhibits include all liquid bleach produced by the Prescott Company? A. That is so.

* * * * *

(Tr. p. 2549)

* * * * *

Q. Mr. Henkel, what brand name is the Prescott liquid bleach sold under? A. Dazzle Bleach.

* * * * *

(Tr. p. 2551)

* * * * *

CROSS EXAMINATION

By Mr. Royall:

Q. These figures include your private label brands, do they, sir? A. Which figures are you referring to?

Q. The figures in these exhibits that you prepared? A. Yes, sir.

(Tr. p. 2552)

Q. There is little or no advertising and promotion by you for private label brands, is there? A. That's right.

* * * * *

(Tr. p. 2563)

* * * * *

Robert Prescott

was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Robert Prescott—Direct

Hearing Examiner Haycraft: What is your full name?

The Witness: Robert Prescott

* * * * *

DIRECT EXAMINATION

By Mr. Tincher:

Q. Mr. Prescott, are you appearing here today under subpoena? A. Yes, I am.

Q. What company are you affiliated with, sir? A. The J. L. Prescott Company in Passaic, New Jersey.

Q. What is your position with that company? A. Treasurer.

Q. How long have you been in that position, sir?

(Tr. p. 2564)

A. About 30 years.

Q. Is the Prescott Company a public corporation or a family type? A. It's a family type.

Q. How long has it been in business? A. I think about 87 years.

Q. What business is the J. L. Prescott Company engaged in? A. In the manufacture and sale of household specialties such as bleach, household ammonia, liquid starch, stove polish, metal polish, laundry blueing. We make a dishwashing detergent and there are several other small items.

* * * * *

Q. In addition to your duties as a corporate officer, sir—maybe at this point we might determine what your duties are as a corporate officer. A. Well, I work on budgeting, in advertising and sales promotion in conjunction with other members of the firm.

(Tr. p. 2565)

Q. Do you take an active part in the management and policymaking decisions of the company? A. Yes, I do.

Robert Prescott—Direct

Q. Can you tell us, sir, approximately what percent of your total business of the company of all products is accounted for by the sales of liquid bleach? A. Approximately 50 percent.

Q. Is the liquid bleach produced by your company a household or an industrial type? A. Entirely household.

Q. Where is your liquid bleach produced, sir, what geographic location? A. In Passaic, New Jersey.

Q. Where is your liquid bleach sold? A. I have here in the court a map that sort of outlines the territory. You will find on the back the typewritten notation explaining that map.

Mr. Tincher: Mr. Reporter, would you please mark as Commission's Exhibit 495 for identification, a printed map of the northeastern portion of the United States with various areas shaded with a pinkish color pencil, and as Commission's Exhibit 495B—we have to make the front "A," a typed statement on a label of the J. L. Prescott Company.

(The documents referred to were marked as Commission's Exhibits 495A and B for identification.)

(Tr. p. 2566)

By Mr. Tincher:

Q. I hand you Commission's Exhibit 495 for identification, sir, and ask you if that is the map you have just been discussing? A. Yes, it is.

Q. Do the areas in pink show where your product is sold primarily? A. That's correct.

Q. Do I understand that there is a possibility that some might be sold outside of the pink areas to a minor extent? A. That's correct. The pink areas show where we make

Robert Prescott—Direct

deliveries and, of course, there are certain chains that might make distribution in areas where we actually don't deliver ourselves.

Mr. Tincher: I offer Commission's Exhibit 495 for identification, sir.

* * * * *

Hearing Examiner Haycraft: All right, Commission's Exhibit 495A and B for identification are received in evidence.

* * * * *

(Tr. p. 2567)

* * * * *

Q. Are your other products sold in the same sales area as your liquid bleach? A. Our stove polish is sold nationally and liquid blueing is sold in areas outside of that, but all of our Dazzle products are sold within that area.

Q. Do you have direct salesmen in the sale of liquid bleach in your other areas in this northeastern part of the nation, or do you use brokers? A. We have salesmen and we also have two brokers in that area.

Q. Where are the brokers located, sir? A. There is one in Albany and one in New York City.

* * * * *

(Tr. p. 2568)

* * * * *

Q. How is your liquid bleach advertised, and by that, sir, I mean first what media is used? A. We use television spot announcements. We have radio spots in some areas and newspapers in some areas.

Q. Are these media used continuously or for given lengths of time or sporadically or just how are they used? A. We generally advertise from approximately the middle of March until the middle of November, and then have no advertising for the period in between.

Robert Prescott—Direct

Q. What's the basis for that selection, sir? A. Well, we feel that the advertising budget will produce more results if it's concentrated during that period of time rather than spread over the twelve months.

Q. Has your company considered sponsoring a T-V or radio program as distinguished from a spot? A. No, sir.

Q. In the advertising that you do, sir, are you familiar with whether or not there is a discount schedule? A. I know that in television advertising and in radio advertising there is a discount, sliding scale discount, depending upon the amount of space or time taken. I don't know exactly

(Tr. p. 2569)

what those discounts are.

Q. Does your company receive the maximum discount in the various media? A. No. We do not.

Q. How does your company promote its liquid bleach, and I use the term promote as distinct from actual advertising on a medium? A. Our principal form of promotion to the trade is what we call a count and recount deal which we run twice a year. It's usually in the spring and in the fall. We give an allowance of 20 cents a case for a period of approximately a month at each of those times; ten cents off it we call a factory allowance, which is supposed to reflect in a lower price, and the other ten cents is for advertising and promotion by the customers.

Q. Why do you use this particular method, sir, in selling your liquid bleach?

* * * * *

A. I think I'd answer that by saying that up to three or four years ago we used to have cooperative advertising contracts with most of our accounts, and at about that

Robert Prescott—Direct

time the Clorox Company changed their contracts—our contracts were quite similar to Clorox' at that time. When they made that change, we felt that with our smaller volume of sale, that

(Tr. p. 2570)

we could do a more effective job by having a little stronger promotion twice a year than having it run pretty much uniform through the year.

Q. What was the change in the Clorox method that you speak of, sir? A. I think I am correct when I say this.

They have now cooperative advertising contracts with the trade allowing six cents a case off on all cases sold, and accumulations to be paid quarterly, and they do not require any specific performance of the advertising, I believe. I think there are suggestions about what could be done, but there is no actual requirement of performance on the contracts.

Q. Well, I appreciate that, sir. My basic position is, how is that a change from the old method? You spoke of a change.

A. They used to require proof of advertising and they would run—I think they used to give 10 cents a case off for a specific period of time.

Q. Mr. Prescott, I will hand you Commission's Exhibit 493 and I will caution you, this exhibit is in camera, so don't mention any figures upon the record. I will ask you if that document will include any failure of income to be realized or in any other way include the amount expended in the count and recount program of your company as you have described it?

(Tr. p. 2571)

A. Yes, sir.

Q. Those amounts are included in that exhibit? A. Yes, sir.

* * * * *

Robert Prescott—Direct

Q. Now, this count and recount that you mentioned used twice during the year, sir, is at least a portion of that actually passed on by grocers, generally speaking, on the retail shelf? A. Generally speaking, it is.

Q. What effect does that have on a quart bottle, for example, on the price on the retail shelf? A. Usually it lowers the price one cent per bottle.

Q. Has your company found from its experience that the use of the count and recount method aids in the sale of liquid bleach? A. We feel that it does.

* * * * *

(Tr. p. 2572)

* * * * *

Q. Do you grant your bleach purchasers any price discounts, such as, for example—rather than that, why don't you just give us the complete discount structure, if there is any, on your prices? A. We have a quantity discount. A customer—two percent. A customer must purchase a minimum of two hundred cases of bleach. In addition to that, they can order lesser quantities of any of our other products and get the two percent discount, when the delivery is made, all at the same time.

Q. Why is the reason, sir, if there is any, that you are able to offer such a discount? A. The saving in delivery.

Q. Saving to your company? A. Saving to our company.

Q. Do you have any other discounts? A. Cash discount, two percent, ten days.

Q. Does that complete your answer? A. Yes.

Q. Does your company receive or purchase in store promotions on its liquid bleach? A. We do occasionally. Very infrequently, but we have.

Robert Prescott—Direct

Q. Is an in-store promotion of any aid in the sale of liquid bleach? A. We feel that it is.

Q. How does your company go about obtaining an in-store

(Tr. p. 2573)

promotion? A. There are some chains that have a service for special promotions where they charge so much per store, and where it is available we have at times, to bolster distribution or help sales, used that form of promotion.

* * * * *

Q. First, will you tell us what you are talking about when we speak of in-store promotions? A. Generally, basket or end displays.

Q. What do these consist of, sir? A. A larger than normal display of the merchandise concentrated usually in an area separated from the section that it normally is sold in.

* * * * *

(Tr. p. 2575)

* * * * *

Q. Would you tell us the competitive factors that your liquid bleach must face in order to sell?

* * * * *

A. Well, the demand for competitive brands.

Q. What do you mean by that answer, sir? I am not quite clear.

A. I am not sure that I understood your question.

Q. Well, perhaps I should rephrase it, sir.

In other words, what I mean is, what are the market facts or the competitive facts that a liquid bleach producer, such as yours, has to consider in selling his liquid bleach?

* * * * *

Robert Prescott—Direct

A. Well, I would say the activity of competition. The price, you mean?

Q. Not limited to price, sir. All factors that would figure into the picture. A. I would say the activity of competition.

* * * * *

(Tr. p. 2576)

* * * * *

Q. Does the Prescott Company in selling liquid bleach have any trouble obtaining shelf space? A. Yes, we do.

Q. What does your company do in an effort to obtain shelf space, sir?

Hearing Examiner Haycraft: Shelf space where, Mr. Tinch? In a wholesaler or in a retailer?

Q. I meant in the retail stores where the housewives purchase. A. Yes.

Q. And the pending question, to you, Mr. Prescott is, what your company does in an effort to obtain shelf space.

A. We attempt to create an acceptance for our brand, if possible, a demand to enable us to get the distribution which is necessary for the successful sale and promotion of the product.

Q. How do you create this demand, sir? A. Through our advertising and promotion expenditures.

Q. Who are the other liquid bleach producers selling in the same sales area that your company sells in? A.

Clorox, of course. In certain areas, for example, in this Metropolitan area, Rose-X. In Philadelphia, Hood 33 Bleach. In Baltimore, there is the Chlorinated Products Company, and there are many relatively small ones. I don't

(Tr. p. 2577)

know the name of too many of them offhand.

Robert Prescott—Direct

Q. The small ones you speak of, sir, are they local in nature? A. Always local in nature.

Q. Do you know whether they are all individual companies or are they different brands that you have in mind?

A. They are different brands. They are different companies, too.

Q. Have you named the major ones that you can think of, sir? A. Yes, I have.

* * * * *

Q. Would you tell us, sir, the factors that are taken into consideration by your company in determining what price it

(Tr. p. 2578)

will charge for its liquid bleach? A. Well, we felt that we wanted to have margin enough to advertise and promote the product and, frankly, we pretty much followed the pricing that Clorox has. We felt that we couldn't sell higher than Clorox so that's really been our determining factor.

Q. Is there any particular reason, sir, for your sales area of liquid bleach being in the areas it is in, in the pink shading, rather than covering the entire— A.

(Interposing) Yes, there is.

Q. What is that, sir? A. The distance away from the factory is the limiting factor.

Q. Why, sir? A. Because of the cost of transportation. You get beyond a certain number of miles and you can't afford to deliver it.

Q. Can you give us an approximation, sir, of how far out such an area extends where the profit possibility remains? A. I would say around four hundred miles would be the furthest distance from our plant.

Robert Prescott—Direct

Hearing Examiner Haycraft: Is that about the distance a truck could go in one day?

The Witness: That's about right. Of course, outside truckers have a rate, you see. I wouldn't know whether they take it in one day or two. But it's the rate that makes it

(Tr. p. 2579)

prohibitive.

Hearing Examiner Haycraft: Do you use outside truckers on some of your deliveries?

The Witness: On some of our deliveries.

By Mr. Tincher:

Q. Will you tell us from the viewpoint of your company what the strength and significance of the Clorox competition in liquid bleach is, if there is any?

* * * * *

A. Clorox is the dominant factor in all of the territories where we sell.

* * * * *

Q. To what does your company attribute that, sir?

* * * * *

A. The expenditure of money for advertising and promotion which they have done very successfully.

* * * * *

(Tr. p. 2580)

* * * * *

Q. Let me ask you, is your liquid bleach a sodium hypochlorite solution? A. Yes.

Q. Is it a five and a quarter per cent solution? A. Yes, sir.

Q. Have you had any occasion, sir, to see yourself, personally, the labels of the other liquid bleaches sold in this area? A. Some of them.

Robert Prescott—Direct

Q. Now limiting your answer, sir, to the ones that you have actually seen with your own eyes, can you tell us if those bleaches are also a five and a quarter per cent sodium hypochlorite solution?

Hearing Examiner Haycraft: Whether they advertise themselves to be?

Mr. Tinch: That's right.

* * * * *

A. Almost all of them. I believe there are may be 1 or 2

(Tr. p. 2581)

or 3 that sell in gallon bottles, I think, 3% solution. But they are relatively small and unimportant.

* * / * * *

(Tr. p. 2582)

* * * * *

Q. Can you tell us, generally speaking, in your sales area how many different brands of liquid bleach the grocery store will carry? A. Of course, it varies quite a bit depending upon the

(Tr. p. 2583)

individual chain. I would say from three to maybe five.

Hearing Examiner Haycraft: He didn't restrict his question to chains, as I understood it.

The Witness: The same thing, I think, would be relatively true of the independents. They probably would carry many brands that the chains didn't carry.

* * * * *

Q. What percentage of your liquid bleach business, sir, is sold in grocery stores as distinguished from drugstores and variety stores or any other type of stores? A. Almost a hundred per cent.

Robert Prescott—Direct

(Tr. p. 2584)

Q. Do you have any idea what per cent of your grocery store business is sold to chains as contrasted to independents? A. I would say—

Hearing Examiner Haycraft: (Interposing) That's a different question than the one to the other witness. This is on your Dazzle.

* * * * *

A. Approximately 60%, I would say.

Q. Does your company belong to or know of any trade association of household liquid bleach—

* * * * *

(Tr. p. 2585)

* * * * *

The Witness: There has been formed, I think, about two years ago, as a part of formerly existing group—I can't think of the name of it offhand. A bleach makers' organization.

* * * * *

(Tr. p. 2586)

* * * * *

Q. Let me ask you, sir, if that is an organization in Philadelphia? A. I think that's where it is located.

Q. Let me ask you, sir, if that is a group of industrial or commercial bleach producers as distinguished from household—

* * * * *

A. I believe that it is not industrial. I believe that it is groups that sell to household consumers.

Q. Does your company belong to this organization, sir?

A. Yes, we do.

Q. Can you give me the name of this organization?

A. I just can't remember. It's some united guild or something.

* * * * *

Robert Prescott—Direct

(Tr. p. 2590)

Q. Since 1952, up to through 1957, has your concern lost any grocery store accounts on liquid bleach?

(Tr. p. 2592)

Hearing Examiner Haycraft: (Interposing) Why prior to? Why should we be interested at all in what the industry was prior to the acquisition?

Mr. Tinchér: Because, as we allege in our complaint and as I believe the evidence is showing, the Clorox Chemical Company on its own, without the aid and assistance of Procter & Gamble was gradually pulling away from the liquid bleach market.

Hearing Examiner Haycraft: So what? We can't hold the respondent responsible for that.

Mr. Tinchér: No, sir. We wouldn't allege that's respondent's fault. It is our contention it is a market fact. If we were just going to find out what respondent does in a Section 7 case, we could eliminate about 48 per cent—

Hearing Examiner Haycraft: (Interposing) That thing cuts two ways. If Clorox was able to get 48 per cent of the business, I think that's the thing we can use, the various methods it used prior to its acquisition by Procter & Gamble. How can we assume it will get more, except as the evidence shows how Procter & Gamble's size and its ability to get better rates and so forth and so on.

(Tr. p. 2593)

Hearing Examiner Haycraft: I understand your question was whether he had lost any business, any accounts. Of course, anybody that is familiar with business of this

Robert Prescott—Direct

kind at all knows, yes, certainly, anybody, everybody is going to lose some business and pick up more.

If he testified that he lost certain accounts, that opens the door for Mr. Royall to find out what accounts he lost and where they were and now you asked him what the conditions of why he lost them, his opinion as to why he lost them.

We are spending a lot of time and money on a factual situation that just doesn't have any bearing as I see it. If you would ask that question subsequent to August

(Tr. p. 2594)

1957, from August 1957 up to now, I think it would be relevant and material but I just can't see why we want to go into an obvious situation.

* * * * *

Q. Mr. Prescott, does your company advertise in daily newspapers in your sales area? A. Yes. In some territories.

Q. Are you familiar with the various rates that are offered by those newspapers and by rates, I have reference to the categories of rates that are offered? A. I believe they have a local rate and a national rate.

Q. What rate does your company receive when it advertises?

(Tr. p. 2595)

A. The national rate.

Hearing Examiner Haycraft: Is that on your liquid bleach?

The Witness: Yes.

Hearing Examiner Haycraft: Is that higher or lower than your local rates?

The Witness: It is higher.

Robert Prescott—Direct

Q. Do you know what the local rate applies to, sir, what type of advertising? A. My understanding—

* * * * *

A. It is for local storekeepers, local people of that kind as a rule.

By Mr. Tincher:

Q. When you say store, do you mean retail? A. Retail.

* * * * *

(Tr. p. 2596)

* * * * *

Q. Generally speaking, sir, in what section of the grocery store in your sales area are liquid bleaches placed?

A. They are in a section where cleaners and soaps and products of that kind are sold.

Hearing Examiner Haycraft: Of course, that's in well organized stores?

The Witness: Yes. Chain stores. Any self service type of store.

* * * * *

(Tr. p. 2597)

* * * * *

Q. Is the Prescott Company affiliated with or a subsidiary of any other concern? A. We have a subsidiary company called the Blue Magic Company.

(Tr. p. 2598)

Q. How does that company fit into your operations, sir?

A. It is a sales company. We sell our private label products through Blue Magic.

* * * * *

Hearing Examiner Haycraft: Blue Magic might indicate it might be bluing.

Robert Prescott—Direct

Do you sell all your products to private brand distributors through the Blue Magic subsidiary?

The Witness: Yes, sir.

Hearing Examiner Haycraft: What is it, a transfer on your books from your plant?

The Witness: J. L. Prescott Company purchases all supplies and manufactures and sells to Blue Magic at a fixed price. Blue Magic sells to their customers.

By Mr. Tincher:

Q. How many employees does your company have all together, sir? A. In the plant?

Q. And your salesmen, too.

(Tr. p. 2599)

A. I think about 95. Approximately 95. I think including the salesmen, it might be 105.

* * * * *

Q. Is the Prescott Company producing liquid bleach at full capacity, sir? A. No.

Q. Can you give us an approximate idea of what capacity is being used or what shifts are being worked, however you would put it? A. We work just one, eight hour a day shift. We could probably produce at least double what we are producing within that same eight-hour period.

Q. Have the costs of production and distribution of liquid bleach increased since 1952? A. Yes, they have.

Q. Have you passed on all these cost increases to your customers? A. When Clorox does.

* * * * *

(Tr. p. 2600)

* * * * *

Q. Mr. Prescott, are you familiar with the fact that

Robert Prescott—Cross

about August 1, 1957, the Procter & Gamble Company purchased the Clorox Chemical Company? A. Yes, sir.

* * * * *

"Q. What effect, if any, will that acquisition have on the business of your company, sir? A. Well, it is our feeling that if approximately the same promotions are continued that the Clorox Chemical Company used and in addition to that, things such as coupons, so much off on the label, that type of promotion added to it would definitely be harmful to our business.

* * * * *

(Tr. p. 2602)

* * * * *

Room 511-A
United States Court House
Foley Square
New York, New York

• May 29, 1958

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 2603)

PROCEEDINGS

* * * * *

Robert Prescott

resumed the stand and testified further as follows:

* * * * *

CROSS EXAMINATION

By Mr. Royall:

* * * * *

Robert Prescott—Cross

(Tr. p. 2606)

* * * * *

Q. Now, you were asked yesterday about your competitors. I would like to hand you a paper designated as Respondent's Exhibit 16 which has already been identified in a previous hearing this week, and ask you if by looking at this paper and refreshing your recollection, you can name other competitors in the New York area and New Jersey that your company has.

Will you examine it and if you can add any, I would appreciate your doing so.

* * * * *

(Tr. p. 2608)

* * * * *

A. No-Worry. Mel-O-Mix. Aquilina. Blue Ribbon was one I referred to when I mentioned the fact that there was a 3 per cent bleach packed in this area. La Blanca. Spotless White.

Q. Some of these are small bleaches, are they not?

A. That's correct.

Q. Do you recall whether in Baltimore among your competitors a Londre and Deltax? A. Yes, sir.

Q. Do you recall in New England your competitors include Savol— A. I mentioned that.

Q. Sunlight? A. Yes.

Q. Snoboy? A. Snoboy, I don't know.

Q. Star Water? A. Yes.

Q. Now, there are, of course, other bleaches that you would not recall in this area, of these various areas? A. I think so.

* * * * *

(Tr. p. 2610)

* * * * *

Robert Prescott—Cross

Q. I believe Clorox is the largest bleach producer, is it not? A. Yes.

Q. Is that what you meant yesterday when you said it was a dominant producer? A. Yes, sir.

Q. With relation to your advertising and radio programs and television, you did have some radio program shows, did you not? A. Many years ago.

Q. Well, didn't you have one in Boston in 1956, the "Morgan Baker Show"? A. A participation show. We did.

Q. You participated with others? A. That's right. We did.

(Tr. p. 2611)

Q. Did you have the Priscilla Fortesque show and the Carl Moore show about the same time? A. I have forgotten. It is quite possible.

(Tr. p. 2612)

Q. Do you recall also sponsoring in 1956 the WEEI supermarket program? I suppose that is a radio station name.

Do you remember that?

Mr. Tinch: It is a Boston station, if that is any help. By Mr. Royall:

Q. That's what I was asking about. A. That was radio, wasn't it?

Q. Yes, sir. A. I do remember it.

(Tr. p. 2613)

Q. Do you recall whether in May 1957 in your announce-

Robert Prescott—Redirect

ment of the price change which was to become effective May 20, 1957, you made this statement, and I quote.

"Dazzle is being currently advertised on either T-V or newspapers on a substantially increased rate over previous years." A. That's correct.

Q. You did make that statement? A. Yes.

* * * * *

(Tr. p. 2617)

* * * * *

REDIRECT EXAMINATION

By Mr. Tincher:

(Tr. p. 2618)

* * * * *

Q. These bleach companies, you designated as small, the Mel-O-Mix Company, No Worry, Acquilina, Spotless White, Blue Ribbon. Are any of these companies large companies? A. None of them.

Hearing Examiner Haycraft: I don't know what you mean by large.

By Mr. Tincher:

Q. Are any or all of them purely local companies as distinguished from people selling more than one state or more than one metropolitan area? A. I believe Savol has a little wider distribution than most of the others.

* * * * *

(Tr. p. 2624)

* * * * *

RECROSS EXAMINATION

By Mr. Royall:

Q. About the promotions, have you not for a number

Robert Prescott—Recross

of years offered your customers one case with ten? A.
In certain instances?

Q. In certain instances. A. Yes.

Q. And in March, 1956, didn't you offer one case with five for a limited period of time? Do you recall? A. I don't recall. I am sure it wasn't done in every territory. It may have been done in certain territories. I don't definitely recall.

Q. Did you not in May, 1956, offer a toy doll as a self-liquidating premium?

* * * * *
(Tr. p. 2625)

A. Yes, in Massachusetts, I believe, in one territory in Massachusetts, we did.

Q. On bleach? A. On bleach.

* * * * *
(Tr. p. 2626)

FURTHER REDIRECT EXAMINATION

By Mr. Tincher:

Q. I hand you Commission's Exhibit 491, sir, and ask you if the sales figures in dollars referred to there are gross or net? A. Gross.

* * * * *
(Tr. p. 2627)

Mr. Royall: Your Honor, we had a discussion yesterday, and they took notes and they went over the notes before I left. We thought maybe, instead of putting witnesses on the stand about this, we might be able to agree

Robert Prescott—Redirect

what the facts are. If we can do it, we won't have to put witnesses on. I don't know what happened today, so I can't vouch for that. I mean what happened out at the plant today.

As to Exhibit 491. I hand that to your Honor. We examined in the general ledger the monthly dollar totals of all bleaches, which total includes totals for Dazzle and totals for private label bleaches, but the private label bleaches were not segregated. The totals on the general ledger were the same as those in Exhibit 491.

* * * * *

(Tr. p. 2628)

* * * * *

Mr. Royall: The only record supporting these ledger figures was stated to be the invoices which would support the total sales of liquid bleach. We requested these invoices, but they were denied on the ground it would be unreasonable to produce them.

That is correct, isn't it?

Mr. Tinch: That's my understanding. There are thousands of them. It wouldn't do you any good to look at a few of them. In other words, an absolute audit of the company's books.

Hearing Examiner Haycraft: These ledgers are the books used in the transaction of the company's business?

Mr. Royall: Yes, sir. We don't deny they were used by the company as part of the records in the transaction of their business.

We requested, but were denied any records or any information concerning the location of the records showing the quantities of private label or Dazzle Bleach except in the one total.

* * * * *

Robert Prescott—Redirect

(Tr. p. 2631)

* * * * *

Mr. Royall: I want to ask specifically that your Honor require them to produce the records showing the quantities of private label and the quantities of Dazzle Bleach for the period set out in Exhibit 491.

Hearing Examiner Haycraft: I decline to do that. Not relevant or material to the issues in this case.

Mr. Royall: We requested, and did not receive the records showing the prices of private label bleaches, the average price of private label bleaches.

Is that correct, is it not, sir?

Mr. Tincher: Yes. I think in all fairness to the witness, it was primarily on my recommendation again, that they didn't. Although I may be slightly incorrect in that.

* * * * *

(Tr. p. 2633)

* * * * *

Mr. Royall: Your Honor, there was a statement yesterday which Your Honor referred to a moment ago about putting a percentage figure on this exhibit, the percentage of private brands. That figure was given to us yesterday in the meeting as an estimate. I don't think probably I should state it publicly. I would like to find out if it is the

(Tr. p. 2634)

intention of the Government to put that statement—

Hearing Examiner Haycraft: (Interposing) I think I should like to follow the same procedure I did before, and have the witness write in his own handwriting, whoever prepared that exhibit—if the witness isn't here yet—

Mr. Royall: (Interposing) I think the witness here heard that.

953a

Leon Brower—Direct

(Tr. p. 2635)

Hearing Examiner Haycraft: Put a statement on there that the foregoing figures, it is his estimate that such and such a percentage was Dazzle brand, and such and such a percentage was private labels. That will give us some idea of the private brand business as compared with the other in a general way without going into detail.

* * * * *

(Tr. p. 2656)

* * * * *

Room 395
Old Suffolk Court House
Boston, Massachusetts

June 3, 1958

Met, pursuant to notice, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 2657)

PROCEEDINGS

* * * * *

Leon Brower

was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Hearing Examiner Haycraft: Will you state your full name?

The Witness: Leon Brower.

* * * * *

Leon Brower—Direct

(Tr. p. 2658)

By Mr. Deveny:

Q. What company are you affiliated with? A. Sunlight Chemical Corp.

Q. Where is that company located? A. In Rumford, Rhode Island. That is a division of the town of East Providence.

Q. What is your position with that company? A. President.

Q. How long have you been president of the company? A. Thirty-nine years.

Q. How long has the company been in business? A. Thirty-nine years.

Q. What does your company do? A. We manufacture a rather complete line of household chemicals for cleaning and washing in the home, that sell through the regular grocery outlets of the chain stores and wholesale groceries.

The lines include bleach, ammonia, regular starch, plastic starch, and recently detergent to wash dishes.

We also supply bleach to laundries and a few mills.

Q. Is that a significant portion of your bleach business, or how significant is it, I should say? A. The laundry and mill business would be about 20 percent of the total amount of bleach we sell.

(Tr. p. 2659)

Q. What is the production location for your liquid bleach manufacturer? A. We do not actually manufacture the bleach which is sodium hypochlorite. We buy

that in tank cars from a local large chemical concern.

Q. Where do you produce that? Where do you pack that? At your plant? A. Oh, yes.

Leon Brower—Direct

Q. Do you have any other location? A. No. Warehouse stocks, that is all.

Hearing Examiner Haycraft: Do you mean all you have to do is dilute that, Mr. Brower, this concentrate that you buy?

A. That is all we do, bring it in in tank cars, put it in a tank, add water to it, and put it in bottles and deliver it to the customers. We have in the past manufactured our own sodium hypochlorite bleach solution. If you do it that way you have to go and buy chlorine and caustic soda and put them together to make the hypochlorite and we buy from the same concern. Their price for the manufactured product was about the same as the two raw materials, so that is why we bought it all manufactured.

Q. What percent of your company's liquid bleach would be represented by the household liquid bleach? May I rephrase that?

(Tr. p. 2660)

What percentage of your total business is accounted for by liquid bleach?

A. About 25 percent.

Q. I hand you Commission Exhibit 496 for identification and ask if you can identify that for us?

(Tr. p. 2661)

The Witness: In keeping our records we have a certified public accountant who comes in every month and gives us a balance sheet, a trial balance sheet and a profit and loss. He does not break the sales down into all the various products we make. We do that ourselves.

Leon Brower—Direct

And from our books I extracted these figures, going back six years. I didn't bring the original books in because, to represent this, I would have to have 50 great big ledgers. I could go through them and take the totals off myself in the office but I didn't think it was necessary. I certified that I personally took these off those books. These are the correct figures.

* * * * *

(Tr. p. 2663)

* * * * *

Mr. Deveny: Your Honor, I would like to offer Exhibit 496, if I may, in camera. I realize what Mr. Brower said. But for purposes of consistency, we will make the offer in camera.

* * * * *

(Tr. p. 2664)

* * * * *

(The document heretofore marked Commission's Exhibit 496 for identification was received in evidence and ordered SEALED.)

* * * * *

(Tr. p. 2670)

* * * * *

By Mr. Deveny:

Q. I would like to ask you first, under what brand names do you produce your bleach? A. We have three brands: Sunlight, Moonlight, and Wescco.

Q. All three are your own brands? A. Yes. Wescco comes from West Springfield Chemical Company, which we bought 20 years ago.

Hearing Examiner Haycraft: What is the difference between Sunlight and Moonlight?

The Witness: Well, Sunlight is our first grade, and Moonlight is our second grade, theoretically.

Leon Brower—Direct

Hearing Examiner Haycraft: Does that mean that there is a different percentage of the solution?

The Witness: No.

(Tr. p. 2671)

Hearing Examiner Haycraft: In there no difference?

The Witness: It all comes out of the same tank.

(Tr. p. 2676)

Q. Could you explain the difference between your zones for us, sir, what zones you have? A. As most of our goods are sold delivered by our own truck, the selling price is modified by the distance of the customer. So that we take the New England States—the three southern New England States in Zone 1, and including a part of Maine.

Most of the rest of New Hampshire, Vermont, and Maine is in Zone 2. We do make Zone 3 way up in the tip of Maine. And we add ten cents a case to each zone.

Q. What is the basis for the difference between zones? A. It reflects the increased cost of delivering a much greater distance.

Q. Is that ten cents a case increase consistent all the way through between zones on all products? A. Oh, no. I was just talking about bleach.

Q. Would that have been true of all price increases in the

(Tr. p. 2677)

two different years? A. Yes. When we change our prices, maybe once every year or two years, we would increase each zone by the equivalent amount of the increase.

Leon Brower—Direct

(Tr. p. 2680)

Q. Mr. Brower, could you tell us your sales area for your liquid bleach sales, geographically? A. New England.

Q. What states would that include? A. All of the New England States.

(Tr. p. 2681)

Q. What type of sales force do you use for your liquid bleach? A. We have our own salesmen who cover New England.

Q. Is that true for your other products? A. All our products in New England are sold by our own salesmen. We have three jobbers in New York State who sell our plastic starch; we have other jobbers in other parts of the country who sell our plastic starch.

(Tr. p. 2682)

Q. Mr. Brower, I will rephrase the question. Why do you use salesmen in the New England area?

(Tr. p. 2683)

The Witness: Why do we use our own salesmen instead of brokers to sell our bleach in New England?

Mr. Deveny: Yes, sir.

The Witness: It is a matter of opinion. I don't think I can prove it mathematically. We have tried the other way. We think we have better control of our sales force when they are drawing salaries from the office rather than sell-

Leon Brower—Direct

ing through a broker who has other lines. I think your own salesmen can concentrate on your own products, whereas a broker may have twenty different products. I think that a direct sales force, generally speaking, is more efficient and will produce better results than hiring an outside sales force like a broker.

By Mr. Deveny:

Q. Do you advertise your liquid bleaches? A. No, sir.

* * * * *

(Tr. p. 2684)

* * * * *

Q. Had you advertised the bleach in the past? A. Do you want to go thirty years back, yes.

Q. Why now do you not advertise the bleach?

* * * * *

The Witness: We see very little future in this, to the Sunlight Chemical Corp., in liquid bleach. I think our future lies in selling plastic starch. Therefore, any surplus money we have to put into advertising we put into plastic starch, which shows a good profit rather than liquid bleach which is highly competitive and doesn't show a good profit.

By Mr. Deveny:

Q. Do you promote the liquid bleaches? A. Well, promote it?

Q. That would be the way I use the term, sir, let me explain, in opposition to paid media advertising for promotion. A. Our salesmen try to get orders for liquid bleach when they call on the trade. And we do put on, about once a year, a special sale on liquid bleach. We reduce the price, or give one case free with ten—the usual

Leon Brower—Direct

deals that are put on by people who sell to the grocers and trade.

Q. How often would those deals be, did you say?

* * * * *

The Witness: Not very frequently. We put one on

(Tr. pp. 2685-2686)

this year. We didn't put any on for the last two years.

* * * * *

Q. Were there any other promotions used on liquid bleach other than what you have mentioned? A. No. Well, I wouldn't make an unqualified No. We put sales in stores on our whole line. We will send three people

(Tr. p. 2687)

into a store and if they buy a bottle of any of our products we will give them a bottle of bleach or ammonia. It is all tied in with the general advertising of a special store sale.

Q. When you say a special store sale, what determines that? A. Usually we go to the First National, we take ten First National Stores, for ten weeks, and we send three people in to that store and they would have all our products on display, and as the customers came by our sales people would accost them and say, "Would you like a bottle of ammonia bleach free? If you buy one we will give you one free."

We sell a tremendous quantity of goods that way. Where a store would only sell ten cases we would sell 200 but it costs us about \$300 a week to do it. I brought that out to show you that I couldn't give an unqualified No that we don't spend any money on advertising liquid bleach because a proportion of that cost should be allocated to the liquid bleach as well as the other products. How much I don't know.

* * * * *

Leon Brower—Direct

(Tr. p. 2688)

* * * * *

Q. Could you tell us what some of the competitive factors are which determine whether or not you sell liquid bleach?

* * * * *

A. What some of the competitive factors are? You mean who are our competitors? Or what they do? I don't just understand you.

By Mr. Deveny:

Q. Both, actually. What competitive elements play in the sale of liquid bleach.

* * * * *

(Tr. p. 2689)

* * * * *

A. I think our main competitor selling liquid bleach is the amount of money that our competitors have to spend for advertising. I do not think it is the product itself of our competitors that we fear as competition because all good brands of bleach are, chemically speaking, identical. They bear a different trade name. It is the ability of the larger companies to spend tremendous amounts of money in advertising that gets them the business instead of the smaller company like ourselves.

I think in the past the tactics of the two leading manufacturers of bleach in the country haven't bothered us particularly. I mean the ethics of their selling was satisfactory to us.

* * * * *

Q. You mentioned two of your leading competitors. Who would those be?

(Tr. p. 2690)

A. The Clorox Chemical Company, and the Prescott Company, who manufacture Dazzle.

Leon Brower—Direct

Q. What makes your bleach sell, Mr. Brower?

* * * *

The Witness: We sell it a little cheaper. And of course there is some loyalty in business. We have been selling this before the other two people were in business. We are the oldest manufacturer of bleach in New England that is now existent. And some of our customers, like First National Stores, have bought from us since they started in business, and they like to give us some business. I don't think they need us particularly, but we have pleasant relationships and I think that has a good deal to do with it. And people still buy our stuff off the shelves because it is 2 cents cheaper than the other.

* * * *

(Tr. p. 2691)

* * * *

Q. Are the dry or powdered bleaches competitive with your liquid bleach? A. They are a competitor, yes.

* * * *

Q. Have you noticed any of your customers switching back and forth from liquid bleach to powdered bleach?

A. Most all of our customers use both.

Q. How do they compare on a price basis?

* * * *

A. Powdered bleach is more expensive.

By Mr. Deveny:

Q. How do the freight costs compare between the dry and the liquid?

(Tr. p. 2692)

A. Freight costs on liquid bleach is more than the freight cost on powdered bleach.

Leon Brower—Direct

Q. Is the powder usually packed in bottles? A. It started that way but it has gone over mostly to cardboard now.

Hearing Examiner Haycraft: Why would a customer want both?

The Witness: It has only been going on about five years, powdered bleach. When they started it they were afraid that the bleach would eat through the paper carton, and so they put it in glass bottles. But now they have developed paper that is sufficiently resistant to the action of chlorine, or the oxygen, so that the packages do stay up. So they use paper cartons which are a lot cheaper than bottles to purchase and are a lot cheaper to ship by freight because they weigh less.

Hearing Examiner Haycraft: I am talking about the consumer. You said the consumers buy both.

The Witness: They buy liquid bleach and powdered bleach. Do you want me to elaborate on why?

Hearing Examiner Haycraft: The same customers?

The Witness: The same customer.

Hearing Examiner Haycraft: Yes, I would like to know more.

Mr. Royall: Objection.

(Tr. p. 2693)

Hearing Examiner Haycraft: Overruled. Go ahead.

The Witness: Bleaches are used in households for two main purposes: for bleaching clothes in washing machines, or by hand. When a woman washes clothes in the washing machine or by hand—she gets a much whiter wash if she uses bleach than if she doesn't. Therefore, practically all women use bleach. They use liquid bleach in the washing machine or when they wash in the tub by hand. First, I think because it is cheaper than the powdered bleach.

Leon Brower—Direct

Second, because they are a little afraid that when they pour this powder on that some of the lumps of powder will get on the clothes and burn holes, which it is possible to do. I think they use the powdered bleach around the sink.

A woman has a porcelain sink that she wants to bleach, on which she has fruit stains or something. She can take liquid bleach and pour it in but the liquid bleach will run right down the drain and just bleach what it happens to hit. You can't keep it there long. Whereas a powder bleach you can take the carton and sprinkle a little and it will stand there and bleach the sink out better. That is what women tell me. I think it is so, too. So they really need both.

Hearing Examiner Haycraft: Your powdered bleach then performs more of the function of a cleanser with a bleach in it, such as Comet which Procter & Gamble have?

(Tr. p. 2694)

Mr. Royall: Objection.

The Witness: Yes.

Hearing Examiner Haycraft: It would be more competitive with that?

The Witness: Of course there are two kinds of powdered bleach.

Hearing Examiner Haycraft: Overruled.

The Witness: You understand that all liquid bleaches are sodium hypochlorite. Powdered bleaches are in two categories. First, the calcium hypochlorite bleach which releases the oxygen, which does the bleaching. It is a chlorine compound and has practically identical action to the liquid sodium hypochlorite. But there is also powdered bleach which doesn't have any chlorine in it at all. It is a separate oxygen compound, entirely different.

Leon Brower—Direct

Hearing Examiner Haycraft: What kind do you make, chlorine?

Mr. Royall: Objection.

The Witness: We make only the liquid bleach. We haven't gone into powdered bleach yet.

Hearing Examiner Haycraft: I thought the question awhile ago was that you did make it.

Mr. Deveny: I don't believe I asked that, Your Honor. That was next.

The Witness: No.

(Tr. p. 2695)

Hearing Examiner Haycraft: What was the question that started all this?

Mr. Deveny: I asked him if there was competition between powdered bleach and his liquid bleach.

Mr. Royall: It was a competitive question, your Honor.

Hearing Examiner Haycraft: On my own motion, all that testimony is stricken.

* * * * *

(Tr. p. 2696)

* * * * *

Q. Could you tell us, Mr. Brower, what factors you must consider in setting the price of your liquid bleach? A. I think there are two factors, first the actual cost of your bottles, bleach, labor, and caps, the actual physical components of the product, and add what you would like to get as your overhead and a reasonable profit. That is what you

(Tr. p. 2697)

should sell it for. But you can't always do that because you have competition and you must bear in mind the fact that other people are selling at a price. So you find out what your competitors' prices are and you arrive at a

Leon Brower—Direct

selling price by bringing those two factors into balance: your competition and your cost.

Q. Let me ask you this, sir: If your costs go up, do you always reflect that increase in your price? A. Well, we do, but variations in cost are very slight. The cost of bottles is very stable; the cost of raw materials, of bleach, is very stable. So that you might change your price once a year or once every two years. It is not a business that is going up and down each month or each week. It is over the years that the variation is.

* * * * *

(Tr. p. 2698)

* * * * *

Q. I think you have already said, Mr. Brower, that your bleach is sodium hypochlorite. What percentage of sodium hypochlorite is your bleach? A. Five and a half percent available chlorine.

Q. Do you have difficulty obtaining shelf space for your bleach? A. I don't think we have difficulty obtaining space. I think we have difficulty in obtaining a given amount of space. Of course, we would always like the largest amount of the shelf space that we can get. Our competitors do, also.

Q. Do you know what determines how much you do get?

* * * * *

A. I think that the stores give the greatest space to the item that moves in the greatest volume.

* * * * *

Q. What type of stores handle your bleach, sir? A. Retail grocery stores.

Q. Would that include chains and independents? A. It would.

* * * * *

Leon Brower—Direct

(Tr. p. 2700)

Q. Mr. Brower, have you attempted to get more shelf space for your bleaches?

A. Generally speaking, No, with the exception that when we put these special sales on in the stores we do.

Q. Do those special sales increase your shelf space?

A. Yes.

Q. How many liquid bleaches do your grocery customers generally carry in your sales area? A. The larger chains carry four.

Q. Do you know— A. In New England.

Q. Do you know what the brands are? A. Yes.

Q. Would you tell us?

(Tr. p. 2701)

A. Clorox, Dazzle, Sunlight, and their own brand.

Q. Is that what is commonly referred to as a private label? A. That's right.

Q. Could you tell us what percentage of your bleach is sold in grocery stores, your liquid bleach?

The Witness: I said previously that 20 percent of our sales was to laundries and mills, which would leave 80 percent to grocery stores.

(Tr. p. 2702)

Hearing Examiner Haycraft: But do you sell in any other retail outlet than grocery stores?

The Witness: No.

Leon Brower—Direct

By Mr. Deveny:

Q. Have you any idea of the number of liquid bleach producers in your sales territory—how many there are?

A. Thirty-five.

Q. Would those be brands or producers? A. They would all be very small garage or down-cellar producers.

Q. Do you consider those small producers you mentioned competitive with your product? A. We ignore them. As a background, when I started in business forty years ago, most bleach was sold by these small producers. For instance, in New Bedford, 30 or 40 years ago, there would be 17 producers of bleaches in New Bedford; all little bits of outfits. They have gradually gone out of business. So that my educated estimate is that in the whole of New England there are probably 35 left, very small.

* * * * *

(Tr. p. 2703)

* * * * *

Q. Do you have knowledge of how much of your bleach is sold in chain stores as contrasted to independent grocery stores? A. I think 75 percent would be sold in corporate chains, and 25 percent to wholesale grocers and hence to independent grocers.

* * * * *

Q. How many salesmen do you have in your sales force, Mr. Brower? A. Three.

* * * * *

(Tr. p. 2705)

* * * * *

Q. Do you have any market surveys or research facilities available to you to determine sales of your products and the success of your activities? A. We of course keep our own records of who we sell and what volume we

Leon Brower—Direct

sell each month. The only outside—we don't hire any outside concern to make a survey, but the newspapers—there is a newspaper association in New England that does make a survey on all grocery items, and issues a very complete summary each year. We subscribe to that.

(Tr. p. 2706)

Q. What does that show, that New England survey?

A. It takes each large city in New England and each state and it shows, for bleaches, what percentage in the chain stores carry Clorox, Dazzle, Sunlight, for each city and each state, and then for the whole of the area.

Hearing Examiner Haycraft: Does it show the percentage for each one?

The Witness: For each city. For instance, they go into Providence and they might call on—there would be a thousand independent grocery stores and they might call on a hundred of them, and they would actually go to the shelves and see how many of them carry Sunlight, how many carry Clorox, how many Dazzle, and how many other brands, and give you that summary for those fifty stores. And then you would assume that the other 950 came about the same as the fifty. It is a sample.

By Mr. Deveny:

Q. Does the survey show anything other than distribution by brands? A. No, no prices. Just distribution by brands, that is what it is. It is free. Anybody can write to the newspapers, I think, and get that book free, or for a dollar. We don't hire them to do it. We just take advantage of their work.

(Tr. p. 2708)

Leon Brower—Direct

Q. In what section of the grocery store in this area are the liquid bleaches stocked? A. Most stores have a section of a gondola or group of shelves in which they have all cleaning compounds. Our bleaches are along with the other cleaning compounds, ammonias, starches, blueing, brooms, anything to clean the house.

Q. Would that include soaps and detergents? A. It would.

(Tr. p. 2709)

Q. Cleansers and powdered cleansers? A. Yes.

(Tr. p. 2711)

A. Have we any facilities for scientific research?

Q. Yes, sir. A. We have a laboratory. I am a graduate chemist. I attempt to make a scientific research.

Q. Is the production of liquid bleach by the means which you produce it, a highly technical process? A. I wouldn't think so, no.

Q. Have you ever considered expanding your sales territory? A. Oh, yes.

Q. Have you expanded it? A. No.

Q. Why not?

The Witness: I said we hadn't expanded it. From the start of the company, we started in Rhode Island, and expanded over New England. But in the last twenty years we haven't expanded liquid bleach. Do you want to know why we haven't.

(Tr. p. 2712)

By Mr. Deveny:

Q. Yes, sir.

Leon Brower—Direct

The Witness: The cost of delivery of liquid bleach is a tremendous proportion of the selling price. If we were to attempt to ship liquid bleach from here to Chicago, it would cost more for freight than the selling price of the product. Therefore, the only way we could expand would be to raise sufficient capital to put branch plants throughout the country, which we cannot do. So therefore, we are faced with an economic road block. We can't ship even to New York City and compete with the local New York brands. On the other hand, that has its consolation: They can't come into New England, either.

So all over the country you will find companies like mine that are regional. They are not very large and they are not pipsqueak companies, that serve that region.

By Mr. Deveny:

Q. Is the competition from Clorox any more pronounced in any section of your sales territory than any other section?

* * * * *

The Witness: I think Clorox has nearly one hundred percent distribution throughout New England, irrespective of

(Tr. p. 2713)

whether it is urban or suburban.

* * * * *

Q. Are you producing liquid bleach at full capacity now? A. No.

Q. What would involve producing more, from the standpoint of company operation?

* * * * *

The Witness: We have very high-speed filling machinery that we can produce on that machine enough bottles in

Leon Brower—Direct

three days to last us a month. So it would only be a matter of running the same machinery more days to produce the extra production for the increased sales.

* * * * *

(Tr. p. 2715)

* * * * *

By Mr. Deveny:

Q. Are you familiar with the fact that Procter and Gamble acquired the Clorox Chemical Company approximately on August 1, 1957?

(Tr. p. 2716)

A. Yes.

Q. What effect would that acquisition have upon your business?

* * * * *

The Witness: I think—I believe that it will make it more difficult for us to sell liquid bleach.

* * * * *

Q. Why would that be, why would it be more difficult to sell?

* * * * *

The Witness: I have considerable respect for the ability of Procter and Gamble to advertise planned sales campaigns. I think with their technical know-how they should be able to increase the sales of liquid bleach in their stores. Clorox has done a good job, but Clorox has confined most of their advertising to newspapers and the New York City subway. But very little television, very little radio, very little special offers tied under the bottle, "Five cents off," or a number of things that can be done. They haven't used it.

I think Procter and Gamble know how to use those things, they have tried it on their other products and will

Leon Brower—Cross

try it on their liquid bleach to increase their sales. If they increase their sales I think that we should suffer.

(Tr. p. 2717)

But my past experience has been that that doesn't always come out that way. Sometimes if a large competitor pushes a product and brings it to more people's attention, the great increased consumption through their advertising sort of slops over and we get some of it. It has happened in the past on some other things. Clorox itself. There is tremendously more bleach sold in this country today than there was 25 years ago.

But I still think it would be more difficult for us to sell with a stronger competitor. It seems to me that is only logical. The stronger your competitor, the more resourceful, the more experienced, the more money he has, the more business he should get, and less we should get.

So I say almost unqualifiedly that we will suffer by this taking over of Clorox by Procter and Gamble.

* * * * *

CROSS EXAMINATION

By Mr. Royall:

* * * * *

(Tr. p. 2718)

* * * * *

Q. Let me ask you something about your three bleaches. Do they sell for the same price? A. No. Sunlight sells for a little more than Moonlight, and Moonlight sells for a little more than Wescco.

Q. Approximately what is that difference? A. Ten cents a case.

Q. Is Dazzle—do they sell a good deal in some of your area? A. They are very active, yes.

Leon Brower—Cross

(Tr. p. 2719)

Q. Are they active here in New England? A. Oh, yes.

Q. Is Cormand Water a fairly big competitor in some areas? A. In some areas, yes. In Providence, Rhode Island, and in the Fall River-Bedford section.

* * * * *

Q. I hand you a paper marked RX-21 and ask you to look it over and see if it refreshes your recollection as to some of the private brand bleaches sold in your territory and who makes them.

* * * * *

(Tr. p. 2720)

The Witness: I think they are all correct.

By Mr. Royall:

Q. Will you read them off? I can't put them in evidence now. Who makes them?

* * * * *

The Witness: These are the private brand bleaches: private label, Cooperative Bleaching Fluid.

Hearing Examiner Haycraft: What Cooperative?

The Witness: I don't understand that. New England Cooperatives, of Cambridge.

By Mr. Royall:

Q. That is the buyer? A. That is the buyer. And it is called Co-op Bleaching Fluid and packed by the P. H. Revell Company.

* * * * *

(Tr. p. 2721)

* * * * *

Hearing Examiner Haycraft: Just hand him back the list and testify from your memory as to who they are.

Leon Brower—Cross

Then if Mr. Royall thinks you left somebody out he can hand the paper back to you.

The Witness: This is a partial list of private labels, with the buyers and packers. But there are many more private labels besides that list.

* * * * *

By Mr. Royall:

Q. Is Bright Spot in your territory? A. Yes.

(Tr. p. 2722)

* * * * *

Q. Is it sold by A&P? A. Yes.

Q. Manufactured by the Prescott Company?

* * * * *

The Witness: Yes.

* * * * *

(Tr. p. 2723)

* * * * *

Q. You know Bright Spot, do you, sold in Stop and Shop?

A. Stop and Shop?

Q. Yes. A. Yes, sir.

Q. You know that? A. Yes.

* * * * *

Q. Do you know who makes it?

The Witness: Shall I tell him?

(Tr. p. 2724)

Hearing Examiner Haycraft: If you know. If you don't know, say so.

The Witness: Five years ago I packed all these private labels and I sold the business to Prescott.

By Mr. Royall:

Q. So that is the way you know? A. That's right.

Leon Brower—Cross

(Tr. p. 2725)

* * * * *

Q. Is Mrs. Lane's sold by E. T. Smith and Company in Worcester? A. Yes, sir.

Q. And manufactured by Prescott Company? A. Yes.

Q. Is Lily of the Valley sold by C&S Wholesale Grocers in Worcester, Massachusetts, and manufactured by Prescott Company? A. I don't remember. It is a very small wholesale grocer. I don't remember the brand.

Q. Is Sunny Day a private brand made by Prescott and sold

(Tr. p. 2726)

in First National Stores? A. That is correct; it is.

Q. Is Supreme Bleach a private brand sold in Supreme Markets of Dorchester, Massachusetts, and made by P. H. Revell? A. I believe so. I can't say absolutely Yes but I think it is.

* * * * *

Q. Is Nation-Wide manufactured by P. H. Revell and Company and sold by E. C. Hall Company, Brockton and Hyannis, Massachusetts? A. Yes.

* * * * *

Q. Are there some three and a quarter percent bleaches in your area? A. Yes.

* * * * *

(Tr. p. 2727)

* * * * *

Q. Are you familiar with any of those bleaches, and if so, will you tell us about them and whether they are sold in your territory, or a part of your territory? A. The first one, Cap's Bleach, buys his raw material bleach from me, and his bottles, and puts it up and sells it locally.

Leon Brower—Redirect

Liberty I never heard of.

Aqualite I never heard of.

Snow White, there is a Snow White in Worcester, Massachusetts. Is that the one you refer to?

Q. I don't know. I couldn't tell you. A. All it says on this paper is "Snow White." There is a Snow White bleach in Worcester.

Hearing Examiner Haycraft: Is that $3\frac{1}{4}$ percent?

The Witness: I don't know. He is very small.

United, never heard of United.

By Mr. Royall:

Q. These that you do know, are they in the Providence area?

(Tr. p. 2728)

A. No, I didn't say I knew them.

Q. You knew one or two? A. Cap's Bleach and Snow White. Cap's Bleach is just Providence. Snow White, if that is the Snow White, is just Worcester.

Q. Do you know whether there are any other three and a quarter percent bleaches sold through here? A. Savol.

Q. Do you know of any others, also? A. I know there are other small manufacturers of bleach, Yes.

* * * * *

(Tr. p. 2739)

REDIRECT EXAMINATION

By Mr. Deveny:

Q. Cormand Water Bleach $5\frac{1}{4}$ percent sodium hypochlorite? A. No.

Q. What is the percentage, if you know? A. It was 1.75. I think they have now raised it to around $3\frac{1}{4}$ —3.25 percent.

* * * * *

978a

Solomon S. Buchman—Direct

(Tr. p. 2740)

* * * * *

Room 395
Old Suffolk County Courthouse
Boston, Massachusetts

4 June 1958

Met, pursuant to adjournment, at 10:10 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 2741)

PROCEEDINGS

* * * * *

(Tr. p. 2742)

* * * * *

Solomon S. Buchman

was called as a witness and, having been first duly sworn,
testified as follows:

Hearing Examiner Haycraft: Will you state your full
name.

The Witness: Solomon S. Buchman.

* * * * *

(Tr. p. 2743)

DIRECT EXAMINATION

By Mr. Tincher:

Q. What is your occupation? A. I am in the bleach
water business.

Q. What company are you with? A. Savol Bleach
Company, of East Hartford, Connecticut.

Solomon S. Buchman—Direct

Q. Is the Savol Company a corporation? A. It is not.

Q. Partnership? A. Partnership.

* * *

Q. How long have you been with the Savol Company?
A. January 1, 1946.

Q. And how long has the company itself existed?

(Tr. p. 2744)

A. Some 20 or 22 years before that.

Q. What business is your company engaged in, and what products does it produce or handle? A. We manufacture and distribute bleach water, ammonia, liquid starch, and blueing.

Q. Can you tell us the percent of your company's total business of all products that is accounted for by your sales of liquid bleach? A. About 80 percent.

* * *

(Tr. p. 2754)

Mr. Tincher: Mr. Reporter, may I mark as Commission Exhibit 504 for identification a yellow piece of paper on which I have written the years 1952 through 1957, inclusive.

(Tr. p. 2755)

(The document referred to was marked Commission Exhibit 504 for identification.)

By Mr. Tincher:

Q. Mr. Buchman, I will hand this piece of paper to you and I will ask you if for each year as designated you wrote the gross sales of your company for all products, using, to do so, the annual certified statements that you have with you. Then I will offer this exhibit in camera. It will

Solomon S. Buchman—Direct

be secret. I want just the one figure for each year, the total sales of your company.

And Mr. Buchman, on the sheet which I have marked as Commission Exhibit 504 for identification you have listed various numbers. Will you tell us exactly what numbers you have listed?

* * * * *

The Witness: They are gross sales of all our products for the years 1952 through 1957.

* * * * *

Hearing Examiner Haycraft: Taken from what?

The Witness: Certified copies of our annual report.

* * * * *

(Tr. p. 2756)

* * * * *

Mr. Tineher: I offer Commission Exhibit 504 for identification in evidence, in camera.

* * * * *

(Tr. p. 2765)

* * * * *

Hearing Examiner Haycraft: We will let Exhibit 504 for identification be received for the sole purpose of showing the total volume of business of this firm during the years 1952 through '57. That can be supported by sworn statements of the auditor which he has in the court room.

* * * * *

The exhibit will be received in camera.

* * * * *

(Tr. p. 2775)

* * * * *

Q. Mr. Buchman, is the liquid bleach produced by your company a household or industrial type of bleach? A. Household.

Solomon S. Buchman—Direct

Q. Do you produce any commercial or industrial bleach at all? By that I mean bleach that is not sold in retail stores for housewives. A. We do.

Q. Approximately what percent of your total bleach sales are this type of bleach?

* * * * *

The Witness: I would say about four percent.

* * * * *

Q. Where is your liquid bleach produced? Where is your producing plant? A. By "producing" what do you mean?

Q. Where do you make it? A. At 433 Park Avenue, East Hartford.

Q. And do you have more than this one location? A. My partner and I own the East Hartford plant. Savol

(Tr. p. 2776)

Bleach is also sold in three other locales, which are selling Savol Bleach, the brand name, but we are no other wise identified together.

Q. Is there any relationship among the four companies at all? A. Only through the fact that we have bought our plants from the same individual who, in turn, limited our area of selling.

Hearing Examiner Haycraft: What did you buy from the same individual?

The Witness: We bought the plants.

By Mr. Tincher:

Q. Are these four separate companies, each selling under the name Savol? A. That's right, sir.

Q. And do you have any relations with the other companies at all? Are you affiliated or a subsidiary? A. Only through the commonness of the label.

Solomon S. Buchman—Direct

Q. What is your sales area for your liquid bleach?
A. We have an area identified by contract and map circumscribing the area in which we are limited to sell Savol. Beyond that area we can not sell.

Q. What is that area? A. What area?

Q. Approximately. A. Approximately I would say that it runs Hartford as a central point, an area of about 35 miles radius.

(Tr. p. 2777)

Q. And why is it you can not sell beyond that area?
A. The other plants sell Savol Bleach beyond that area in limited areas, too. That is our boundary line.

Q. When you say that you can not, is there a requirement on you, is there some competitive factor?

Hearing Examiner Haycraft: He said by agreement.

Mr. Royall: He said it was a contract between them.

The Witness: We can't sell Savol Bleach beyond that limit.

Hearing Examiner Haycraft: As I understand, you bought the plant from somebody who put those restrictions on you; is that right?

The Witness: That's right, sir.

(Tr. p. 2779)

By Mr. Tinch:

Q. Mr. Buchman, do you advertise your liquid bleaches?
A. We do some.

Q. What media of advertising do you use? How do you do it? A. We use cooperative advertising.

Solomon S. Buchman—Direct

(Tr. p. 2780)

* * * * *

Q. Do you have a cooperative advertising allowance to your customers? A. We do.

Q. How much is that allowance, sir? A. Five percent.

Q. Do you use any— A. Proof of advertising must

Q. Do you use any television or radio? A. We have, be shown.
and discontinued it.

Q. Why was it discontinued?

* * * * *

The Witness: It has become too costly.

By Mr. Tincher:

Q. Do you use any magazines? A. We do not.

Q. Do you use any newspapers? A. We do not.

Q. Have you used any of these other types of advertising in recent years, newspapers, magazines? A. Not magazines. Newspapers.

Q. How about radio? A. Radio.

(Tr. p. 2781)

Q. Of the ones you mentioned you used, which is the most effective for liquid bleach? A. For liquid bleach?

Q. Yes. A. Cooperative advertising.

Q. Have you had any promotions of liquid bleach; by that I mean have you used such things as price-reducing coupons, special prices, two for one price, free premiums, contests, or anything like that? A. Never.

Q. Do you grant your customers price discounts for quantity purchases? A. In prices comparable to the prices I have given you.

Solomon S. Buchman—Direct

Q. Let me ask you, sir, if a customer may lump together the ammonia and bleach and other products he purchases from you and get a quantity discount on all the products?

A. We had deals of one case free with ten on volume.

Q. Is that on liquid bleach? A. Yes.

Q. Why do you use this particular method of promotion?

A. If a store is capable of selling ten cases, rather than make two or three trips to that store if we can make it in one trip, it is an expense-saving proposition.

* * * * *

(Tr. p. 2782)

* * * * *

Q. What competitors do you have selling liquid bleach in your sales area? A. By name?

Q. By name of producer, yes. A. Clorox Company, J. L. Prescott, Rosex, and then there are a number of small individual packers which just make up a day's work for themselves. They can spring up overnight by the dozens.

* * * * *

(Tr. p. 2783)

* * * * *

Q. Do you have a competitor that you consider a principal competitor among the group that you mentioned?

A. I think that the principal competitor would be Clorox.

Q. Why is that?

* * * * *

A. Because of the extensive amount of advertising that Clorox does in the field of selling. They have gimmicks, or shall I say, presently they have a tie-in sale with a laundry bag, and then seasonally they have allowances that they give both for advertising and for purchasing. Their advertising, if you go into that, of course they are most everywhere in advertising: magazines, radio, newspapers, et cetera.

Solomon S. Buchman—Direct

Q. Will you tell us what factors your company considers in setting its liquid bleach prices? A. Our prices are set on our labor cost, on our commodity—component parts of the commodity cost, insurance, selling, and competition.

(Tr. p. 2784)

Q. Can you give us a general idea of what your liquid bleach sells for in grocery stores, and what the other liquid bleaches that you have mentioned sell for in the same grocery stores? A. I think the prevailing price of our liquid bleach, a penny more or less, is 34-35 cents.

Mr. Royall: What?

The Witness: 34 to 35 cents.

By Mr. Tincher:

Q. What size? A. For the gallon. The contents of the gallon.

Half gallons, 27 cents. Quarts, 15 cents.

Q. Those are your prices? A. Those are our prices.

Q. Do you know the prices of the other bleaches in the grocery stores of comparable sizes? A. A general knowledge.

Q. That is what I mean. A. At the moment—and we are taking chain store prices because in independent stores they may vary quite a bit—in chain stores the gallon bleach, the gallon Clorox is 59. Presently the half gallon is 31 or 32, and the quart is 18 or 19 cents.

Q. How about the other bleaches, the Prescott Bleach? A. Prescott and Clorox are generally the same.

(Tr. p. 2785)

Q. Has that been true all during the present year? A. I would say so.

Q. Has the Clorox Bleach in your area sold at these prices that you have just given us, this entire year? A. No.

Solomon S. Buchman—Direct

Q. What were the other prices? A. I think they have advanced two cents a gallon—I am not sure about the others, but we will take gallons as a criterion. I think they have advanced two cents a gallon in the earlier part of this year.

Q. Do you mean they were 57 earlier in the year? A. Sir?

Q. Were they at 57 cents earlier in the year? A. I think so, yes. They have also been less than 59 cents in recent weeks, when they had a deal on. I think for a period of about four weeks they had a deal on and they went down to 57, and maybe 55. But the price is back up again now.

Q. You mentioned, I believe, other small companies that sell liquid bleach. Do these companies have their products in grocery stores? A. In a few independent stores.

Q. How do their prices run in comparison with you, if you know? Let me ask you first if you do know? A. Their prices, retail prices, would be the same as ours,

(Tr. p. 2786)

and for some reason or other that is what is happening. But what their selling price is I don't know.

Q. Do you manufacture bleach completely, sir, or do you convert bleach concentrate into liquid bleach? A. We convert.

Q. Have you ever considered manufacturing rather than converting? A. We have.

Q. And what is the reason why you did not change to the manufacturing? A. It presents a financial problem which we do not have. It requires some financing and perhaps eventually we may go into it.

Q. Is your bleach a sodium hypochlorite solution? A. It is.

Solomon S. Buchman—Direct

Q. What percent solution is it? A. We have it marked at $3\frac{1}{2}$. It runs about $3\frac{3}{4}$. Between $3\frac{1}{2}$ and $3\frac{3}{4}$.

Q. Are there any other liquid bleaches being sold in your sales area, to your knowledge, that are $3\frac{1}{2}$ rather than the $5\frac{1}{4}$ percent? A. I think we are the prime factor in $3\frac{1}{2}$ bleach. There are one or two others that sell $3\frac{1}{2}$ percent, yes.

* * * * *

(Tr. p. 2790)

* * * * *

Q. Does your company have any difficulty obtaining shelf space for your liquid bleaches? A. That is a constant battle. That is one of the reasons we like to sell and deliver bleach at the same time. Oftentimes our competitor has and, by virtue of the agreement or arrangements with the store managers, we have only a very short space with him. It is a matter of fighting the way in.

* * * * *

Q. If I may rephrase my question, in attempting to get your shelf space what do you do in order to accomplish that objective? A. By having salesmen who are congenial, cooperative with the store managers and in getting into their good graces.

Q. Does the bleach of your company have any unique or special

(Tr. p. 2791)

ability that aids it competitively?

* * * * *

A. Not particularly. I think all bleaches are about the same.

By Mr. Tincher:

Q. What percentage of your bleach that is sold to the housewife is sold in grocery stores as distinguished from

Solomon S. Buchman—Direct

dry goods stores or retail or drug stores, stores of that nature? A. They are all sold in grocery stores.

* * * * *

Q. Is your liquid bleach sold freight or trucking prepaid to the customer? A. We sell our bleach delivered to the store.

* * * * *

(Tr. p. 2792)

* * * * *

Q. You mentioned that you had experience in the grocery business. What type of experience did you have? A. All types.

Q. Sir? A. All types.

Q. By that I mean what positions? A. I have held positions in the grocery store from—in the chain stores from delivery boy to clerk to manager, to efficiency manager. That is during my term of schooling. Upon graduating from college I entered the Cooperative Grocers Association known as the Home Circle Stores in Hartford, of which I was its general manager for a period of 16 years,

(Tr. p. 2793)

doing buying, advertising, and general managership of the plant for 135 stores.

Q. And grocery stores are the competitive problems involved in selling soaps, cleansers and detergents; are those problems any different than they are basically in selling liquid bleaches?

* * * * *

A. I don't think so. I think they are all comparative.

* * * * *

Q. Do advertising and various promotional activities have any effect on the amount of grocery store shelf space

Solomon S. Buchman—Direct

that will be made available to the product that is being tested? A. Very definitely.

* * * * *

Q. Will you explain why that is?

* * * * *

A. The manager of the store will take the line—I say the manager and the owner, in my last 16 years of grocery business business was with individual owners—will take the line of

(Tr. p. 2794)

least resistance, and display and sell the item which the housewife comes in and calls for.

By Mr. Tinch:

Q. What has that to do with whether a product is being promoted and advertised? A. I don't get the question?

Q. I am asking you, the answer you have just given us that the grocer will display what the housewife calls for, what does that have to do with whether or not the product is advertised or promoted? A. The housewife demands it.

Q. Is the advertising of your company extensive enough to allow your company to receive any discounts when it advertises? A. No, sir.

* * * * *

Q. Does your company have any radio or TV programs?

A. Now? No. We do have a cooperative advertising that is music in the store, that is broadcast over a local FM station. It is broadcast in the store and to the home. But that is the only tie-in between radio and ourselves.

Q. Is that one chain involved or one store or what?
A. One chain.

* * * * *

Solomon S. Buchman—Direct

(Tr. p. 2796)

Q. In what section of the grocery store in your area, sir, are liquid bleaches generally found? A. Generally in the soaps and powders division; cleaning division.

(Tr. p. 2797)

Q. Is your liquid bleach sold in large grocery chains? A. It is.

Q. Do you have any idea what percentage of your grocery sales are in chains as contrasted to independent stores? A. Well, sir, what do you constitute a chain?

Q. Let me ask you for your own definition first. A. My own definition of a chain is where there are five or more units which have a central building and a central payment. On that basis I would say that our chain stores business would amount to about 60 percent of our sales.

Q. Is your concern producing liquid bleach at full capacity? A. It is.

Q. How many shifts a day are you working? A. One full shift a day. We have a night shift that loads and unloads trucks. The day crew manufactures.

Q. On your existing machinery that you now have, could you

(Tr. p. 2798)

produce more liquid bleach if you had need to? A. We could.

Q. Since 1952 have the costs of production and distribution of your liquid bleach increased? A. Materially.

Q. And have you passed on all of these increased costs to your customers? A. No.

Q. Will you tell us why you have not?

Solomon S. Buchman—Direct

* * * * *

A. We haven't done it because of a number of factors. Labor in our particular market has gone up by leaps and bounds, since we are considered a critical area. Where we in Hartford were paying "X" number of dollars, a similar manufacturer thirty miles or thirty-five miles away from us paid almost half that for their labor.

No. 2, it seems as though the flint glass, the cost of flint glass always went up before amber glass as an industry, pricewise, and we had to hold off to see what the competitors might have done.

On a local basis there are competitive factors in the automotive business such as gas, for example. In our town we have had conditions where gas was being sold nine cents below outlying towns, and without warning, although we

(Tr. p. 2799)

would pace our delivery cost on that, without warning, without notice, gas would take on the nine cents and suddenly our price would go up where we can't reflect it on our prices on a temporary basis.

Q. Is that gasoline? A. Gasoline. That is for delivery purposes.

There are those factors that enter into it. And oftentimes—one rise, I recall, that we held off better than a year before we went up because competitors were not going up.

Q. Do you make any effort to maintain any differential between your price and the price of the liquid bleach of competitors? A. There is a difference between them in price and certainly we can't begin to sell at the same price that Chlorox and Dazzle might be selling at. One factor, there is a difference in the percentage of bleach.

Solomon S. Buchman—Direct

Secondly, the advertising, the extensive amount of advertising that is done by our competitor makes it almost a household word. We have to give them more than the quality in the product that they expect for less money.

* * * * *

(Tr. p. 2800)

* * * * *

Q. Are you familiar with the fact that the Chlorox Chemical Company was acquired by the Procter & Gamble Company in August of last year? A. I am.

Q. What effect, if any, will this acquisition have on the business of your company in the future?

* * * * *

A. Frankly, we have learned to live with Chlorox. As an individual I am a little bit apprehensive if Procter & Gamble goes on with the method of advertising, method of sampling, method of coupons, and the method of sales that they have used with Procter & Gamble products, both to the wholesaler and to the individual stores, of what they may do to the bleach business.

Again, I am speaking as an individual. We have a little business. We are trying to get along. We are not trying to coop in or take in the entire world. We are making a living. If and when the advertising, if Procter & Gamble would go out with advertising such as they have with other of their products, it would take very little to put us out of business because there isn't enough of a spread or a profit that we are making.

And that is the thing that troubles me a little bit,

(Tr. p. 2801)

and I can't help but be a bit apprehensive of it.

* * * * *

Solomon S. Buchman—Cross

(Tr. p. 2805)

* * * * *

CROSS-EXAMINATION

By Mr. Royall:

Q. Mr. Buchman, I want to ask you just a few questions. You said, I believe, that there were three other Savol companies? A. That is right.

Q. Where are they located? A. One is in Milford, Connecticut; another in Albany, New York; and the other is in Clinton, Massachusetts.

* * * * *

(Tr. p. 2807)

* * * * *

Q. You mentioned some individual bleaches in your testimony this morning, in addition to referring to a number of others. Do you recall the Carrier Bleach Company? A. Yes, I do.

* * * * *

(Tr. p. 2808)

* * * * *

Q. Do you know Ideal Bleach? A. I do.

Q. Do you know the Star Water Bleach? A. I do.

Q. Are their plants in your territory or do they distribute in your territory? A. They do.

Q. Are the plants there, too? A. Going back to Carrier—

Q. That is in Chicopee, Massachusetts? A. That's right.

Q. That is not in your territory? A. It covers so minor a portion of our territory, that I don't consider them a factor.

(Tr. p. 2809)

Q. Ideal is in New Haven, is it not? A. That also is on the fringe areas of our territory.

Solomon S. Buchman—Cross

Q. And Star Water? A. It is a factor but not too great a factor.

* * * * *

(Tr. p. 2810)

* * * * *

Q. Are you familiar with the private label brands of bleach sold by J. L. Prescott Company in your area?

A. I am aware of the fact that J. L. Prescott do pack private labels. For whom they are packing, I do not know.

Q. Is Bright Sale made by Prescott sold in your territory? A. I am not admitting the fact that Bright Sale is packed by Prescott, because I don't know.

Q. Is Bright Sale sold in your territory? A. Yes, but it is a very minor factor.

Q. Is Stop and Shop sold in your territory? A. It is.

* * * * *

Q. In addition to the prices of the various sizes of your bleaches that you mentioned this morning, is there also a two-cent payment which you refund if the bottle is given back? A. That is included.

Q. That is included? A. That's right.

Q. Is that true for all size bottles? A. No, sir.

(Tr. p. 2811)

Q. The amounts differ? A. What is that?

Q. The amount of refund is different? A. The amount that includes is different, too.

Q. I understand. It varies for the sizes? A. The quart bottle is two cents; the others are different.

* * * * *

(Tr. p. 2812)

* * * * *

Q. Do you buy at any time any used bottles? A. We do.

Solomon S. Buchman—Cross

Q. From whom do you buy them? A. We rebate the grocer for these used bottles.

Q. I mean any besides your bottles that you put out. Do you buy them from other people? A. We may buy them from syrup houses, Coca Cola, the like of that.

* * * * *

(Tr. p. 2814)

* * * * *

Q. You spoke this morning about some organization that broadcast and had some other activity in one of the chains to which you sold. Was that Storecast? A. Yes.

Q. Storecast represents you—represents other products, does it not? A. Yes.

Q. And it is an organization that operates for that purpose

(Tr. p. 2815)

of representing various products? A. I believe so.

* * * * *

Q. How long have you been a member? A. Of Storecast?

Q. Yes. About three years?

(Tr. p. 2816)

A. Oh, more than that.

Q. More than that? A. Yes.

Q. And you are still a member? A. Yes.

Q. Are you familiar with the services they render? A. I am.

Q. And you described some of them this morning, I believe, briefly. What do they do? What other things do they do?

* * * * *

A. They tend to broadcast spot announcements during the day, and they also fill in with music in between times

Solomon S. Buchman—Cross

to take up the time. Their representatives cover the stores that are included in this program and see to it that we have appropriate and proper spacing of merchandise, and in instances where the shelves are not filled they are supposed to fill the shelves. And that is about it.

Hearing Examiner Haycraft: You are talking about representatives of Storecast?

The Witness: Of Storecast.

Hearing Examiner Haycraft: Where do they get the

(Tr. p. 2817)

goods to fill the shelves?

The Witness: In their over-stock of the stores.

(Tr. p. 2818)

By Mr. Royall:

Q. They also follow through on these matters, of shelf space and so forth, and follow up to see whether it is being done? A. They are supposed to do that, yes. But being that our men cover the stores once a week, there is little if any of that that they have to do.

Q. Do you pay them? A. Do we pay them?

Q. Do you pay Storecast? A. Yes.

Q. In what territory do you employ Storecast or contract with Storecast to cover? Just the territory you cover?

A. That is right.

Q. Do you happen to know who uses Storecast on bleach in adjoining areas?

Q. In addition to these, may I ask you about one or two other matters, please. Do they make reports to you from time to time on their various activities? A. A mimeograph report, yes.

Solomon S. Buchman—Cross

(Tr. p. 2819)

* * * * *

Q. Do you know how many radio spots they have a week? Do they not guarantee you fifty? A. No.

Q. You don't know how many they have? A. I don't know. This contract has been renewed from year to year, and I should know, but during the week I think we have somewhere in the neighborhood of 20.

Q. I believe, but I am not sure, that I heard you correctly this morning. You made some reference to a deal which resulted in the reduction of price for a period, charged by Chlorox and Dazzle, did you not?

Did you say the price was reduced for awhile? A. There is a seasonal price that is made in the spring and the fall of the year. That I am not quite sure of. But it is somewhere in that neighborhood.

Q. Did you know of any deal made by Chlorox during this recent period? A. Yes.

Q. What was the date of it and what was the nature of it? A. As far as the date is concerned I could not tell you. But I know there was a period of a month that it held, and it was my understanding there was a ten cent count and recount deal and a ten cent advertising deal.

(Tr. p. 2820)

Q. Are you certain about that? A. Am I certain?

Q. I am not trying to mislead you. Are you certain of that? A. I would say fairly certain, sir.

Q. Would this remind you: Wasn't that a Dazzle deal instead of a Chlorox deal? A. No, sir; it was not.

Q. And you say Chlorox had one then, is your impression? A. I am fairly certain of that, sir.

Q. What period did that occur in? Approximately what period did that occur? A. All I can tell you at the moment is the most recent one.

Solomon S. Buchman—Cross

Q. That is what I am asking you about. The one you spoke of this morning. A. The most recent one would be in the spring.

Q. Of this year? A. Of this year.

Q. All right, sir.

I would like to make a request of you. If you want to investigate that further and find that you made an error in it, will you notify your counsel? A. I will do so, sir.

* * * * *

(Tr. p. 2821)

* * * * *

Q. Did you mention this morning a supposed or alleged Chlorox deal with any manager, or did I understand you incorrectly? A. I still don't understand the question.

* * * * *

Q. You didn't refer to any deal that Chlorox made with the manager, did you? A. No, sir.

* * * * *

Q. Do you occasionally give free goods at store openings? A. Yes, sir.

Q. You do? A. Yes, sir.

(Tr. p. 2822)

* * * * *

REDIRECT EXAMINATION

By Mr. Tincher:

* * * * *

Q. Why do you use used bottles at all? A. Why? As I have stated, there is a price advantage.

* * * * *

(Tr. p. 2824)

* * * * *

Q. Why do you use Storecast rather than doing this work which Storecast does for you, doing that yourself?

Solomon S. Buchman—Redirect

A. In a small way I think it does a job. I think that the fact that it has the several announcements during the day of Savol Bleach might hit the housewife either at home or in the store, if she is listening to FM.

Q. Does Storecast promote or create a situation where you can participate in any type of promotion, such as contest or free samples or packages free if you purchase the larger package, or anything of that nature? A. I don't know.

Mr. Royall: You don't know?

The Witness: I don't know, and I don't believe

(Tr.. p. 2825)

they do, because we would be offered the same thing as everybody else.

* * * * *

Q. Is there any reason why Storecast wouldn't be available to anybody who wants to use it? A. It is available.

Q. I believe you said, and correct me if I am wrong, that you get about 20 spots a week on radio from Storecast? A. What is that?

Q. Did you say you got about 20 radio spots a week through Storecast? A. To my best belief, I think that is what it is.

Q. Can you tell us how long those spots are, sir? A. Long enough to incorporate about 25 words.

Q. I was trying to pin it down, if you know, and perhaps you don't, whether it is a ten second spot, half a minute spot, a minute spot, or any other period of time, if you know. A. It is nearer 10 or 15 seconds.

Q. Do you have any control, sir, over the time of day or night that these spots will appear? A. Yes. We have

1000a

Solomon S. Buchman—Redirect

designated the weekend and the wash day, Monday and Tuesday, when we get the bulk of the announcements.

Q. I don't think I have made myself clear, sir. By that I mean do you ask for certain times of the week or the day for

(Tr. p. 2826)

your spots to appear? A. It is all through the week. But it is concentrated on a Monday or Tuesday.

Q. Is it concentrated at your request, sir, or is it just given to you that way? A. At our request.

* * * * *

(Tr. p. 2843)

* * * * *

Room 410
United States Post Office Building,
121 Ellicott Street
Buffalo 3, New York
June 16, 1958

Met, pursuant to notice, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 2845)

PROCEEDINGS

* * * * *

Rexford A. Gardiner

was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Hearing Examiner Haycraft: Will you give your full name, please?

The Witness: Rexford A. Gardiner.

* * * * *

Rexford A. Gardiner—Direct

DIRECT EXAMINATION

By Mr. Tincher:

(Tr. p. 2846)

Q. What is your occupation, Mr. Gardiner? A. I am the President of the Gardiner Manufacturing Company.

Q. And how long have you held that position? A. Since October, 1951.

Q. And as President, what do your duties encompass? A. Well, my duties are inclusive of practically everything in the operation of the manufacturing and the administrative.

Q. All right. And would you tell us what business activity the Gardiner Company is engaged in? A. We manufacture a sodium hypochlorite bleach; a dry bleach and a detergent, which are for resale in the stores.

Q. And how long has your company been engaged in these activities, sir? A. We have been manufacturing a liquid bleach since 1920. And we have manufactured dry bleach for about a year or so; and the detergents for about three.

Q. And were you associated with the company prior to becoming president? A. Yes, I was.

Q. How long altogether have you been with the company? A. Almost the entire life of the company.

Q. All right, sir, approximately what percent of your company's total business is accounted for by the sale of liquid bleach? A. Well, I would say about 90 percent.

* * * * *

(Tr. p. 2848)

Q. Now, let me hand you Commission's Exhibits 510-A and B for identification and I will ask you if you would tell us what that is and who prepared it. A. This was

Rexford A. Gardiner—Direct.

prepared by my bookkeeper, and these are the sales figures for the liquid bleach from 1952 to 1957, inclusive. This is broken down into the sales per gallons, half a gallons and quarts; and also back in '52 we had a 24 ounce bottle and carboys, which are the five gallon containers.

* * * * *

(Tr. p. 2849)

* * * * *

Mr. Tincher: I offer the document, sir—
By Mr. Tincher:

Q. Let me ask you first, Mr. Gardiner, is your Gardiner Manufacturing Company, Inc.—is that a public corporation? A. We are incorporated, but I hold all the stock.

* * * * *

Mr. Tincher: It may be placed in camera.

* * * * *

(Tr. p. 2850)

Hearing Examiner Haycraft: Commission Exhibit No. 510 (a) and 510 (b) for identification may be received in evidence.

* * * * *

Hearing Examiner Haycraft: In camera.

* * * * *

(Tr. p. 2851)

Q. Let me ask you, sir, what the language "101" refers to? A. 101 is our trade name of our product under which it is sold.

* * * * *

(Tr. p. 2853)

* * * * *

Q. I hand you Commission's Exhibit 512 for identification and ask you who prepared and what it is and what

Rexford A. Gardiner—Direct

the figures thereon include. A. This exhibit is showing our advertising figures in the years 1952 to 1957. These are inclusive of all types of advertising, and our bookkeeping system does not break it down into the various forms in which it was used. This was prepared under my direction.

Q. Does the exhibit include promotions as well as advertising? A. This does not include promotions. That is just advertising, newspaper, radio and television.

(Tr. p. 2854)

Q. All right, sir. A. Coupon and other things of that nature.

Q. Well, just to make sure I understand you, sir, I'm a little confused, it does include such things as couponing? A. Yes.

Q. The cost of that? A. Yes, but when I say deal, I mean one free with ten or any such thing as that, which is given to the trade.

Q. Would not be shown on here? A. Yes, that is not in there.

Mr. Tinch: I offer Commission's Exhibit 512 for identification, sir. This should be In Camera.

(The paper referred to, heretofore marked for identification—)

(Tr. p. 2855)

Commission's Exhibit 512, was received in evidence.)

(Tr. p. 2857)

Q. Now, Mr. Gardiner, is the liquid bleach produced by your

Rexford A. Gardiner—Direct

(Tr. p. 2858)

company sold in grocery stores? A. Yes, it is.

Q. Do you have any industrial liquid bleach that you sell? A. No, we don't.

Q. And where is your liquid bleach produced? A. It is produced 160 Van Reseler Street, Buffalo, New York.

Q. And you have only the one production plant? A. One plant.

Q. And will you tell us, Mr. Gardiner, the sales area in which your liquid bleach is sold? A. Western New York and Western Pennsylvania. We ship to Erie, Pennsylvania, Bradford, Pennsylvania, Olean, Rochester, and Niagara Falls; in between those areas.

Q. And what, if anything, sir, determines the extent of your sales area? A. Well, I figure that it is what is considered the Buffalo marketing area, plus the fact that if you go, say, around 150 miles with it, I figure it is not worthwhile.

Q. Why is that, sir? A. Well, the freight rates are such that I can't get decent enough freight rates to make it profitable to ship it to that distance.

Q. All right, now, when you do ship, sir, do you use public carriers or do you use private trucks?

(Tr. p. 2859)

A. Yes, we do—well, we use trucking companies. We have no trucks of our own.

Q. Now, your other two products, your dry bleach and your detergent, are they sold in the same sales area as your liquid bleach? A. That's correct.

Q. Are they sold to the same customers? A. That's right.

Q. I believe you have already testified, have you not,

Rexford A. Gardiner—Direct

sir, that you sell through brokers? A. Yes, we use a broker entirely for our sales.

Q. Do you have any sales force at all? A. None of our own; no other than myself, which is very seldom that I go out.

Q. Now, will you tell us, sir, as briefly as possible, how you advertise your liquid bleach and how you have for the last three or four years, if there has been any change?

A. Well, most all of our direct sales—or advertising, has been done through radio, some through television. Our newspaper advertising is—has been almost exclusively co-operative with ads. What I mean by that is that the chain or the store that is advertising, prints our ad and we pay them for it. We have a regular advertising contract which they use.

Q. Do you have any idea how much per case that advertising

(Tr. p. 2860)

by the chains runs? A. No, I don't, because we—our advertising contract is based on one column inch per month in which we pay them the national line rate and 10% extra if they use one of our cuts.

* * * * *

Q. All right, now how else do you advertise? A. We use Beam Cast in the A & P store—

Mr. Royall: Wait a minute, I didn't understand that.

The Witness: Beam Cast in—not A & P, that is Lo-blaw and Nu-Way.

Hearing Examiner Haycraft: What is a Beam Test?

The Witness: Beam Cast, sir.

Hearing Examiner Haycraft: Beam Cast, what does that mean?

Rexford A. Gardiner—Direct

The Witness: It is an in-store broadcast. It is an FM radio program which beams music into the store, interspersed with commercials, and these commercials, you buy them at so much a month. With that service you get one display, I

(Tr. p. 2861)

believe it is each quarter; you get a display in the store and the Beam Cast Company has girls who check the in-stock position of your merchandise in the store, see that it is priced correctly and that—we have as good a location as we can possibly get. That is only in these two chains. In the Nu-Way chain, it is the only one that handles the liquid bleach. The Loblaw group, we are not on for the liquid there.

Q. We are not what, sir?

Hearing Examiner Haycraft: Not on the beam.

Q. Let me ask you, sir, in the Nu-Way store where your liquid bleach product is beamed, how many liquid bleaches can participate in the program?

A. Only one. They do not take competitive products. Of course, on the liquid bleach also they do not display it because the stores, the chain stores, will not display a liquid bleach because of the danger of breakage.

Q. Have you ever received any displays from the chain?

A. What is that?

Q. In view of that answer, has your company received any displays from the chains on liquid bleach?

A. No, I don't think so. If we have it has just been a display that some manager put up by himself, without any authorization from headquarters.

(Tr. p. 2862)

Rexford A. Gardiner—Direct

Q. All right, sir, now how about television? Has your company done any television advertising? A. We have two spots at the present time, WBEN, which are called ID spots; they are ten second spots.

Q. Now, have you had any radio advertising of your own, above and beyond the beamed program; the beamed cast? A. On radio?

Q. Yes. A. Yes, we do.

Q. And is your advertising on either radio or television sufficient to earn a discount for you? A. No.

* * * * *

(Tr. p. 2863).

Q. All right, sir, would you tell us now how your company at the present and in the past three or four years, has promoted its liquid bleach? A. We have promoted through some direct mail couponing. A few years back we did more of it than we are doing at the present, because of the expense of it. It has become too expensive so we have had to cut it out, more or less. We did one mailing last year in the Erie and Southern tier—what is called the southern tier of New York, in that area, to try and help our business there.

Q. What time of the year was that, sir? A. I believe that was in the early Spring, if I am not mistaken.

Q. Had you completed your answer, now sir, about the way you promote? A. Well, our other promotions, we have done, we have put on a deal where we have sold one free with ten. We have done that twice in the past year.

Q. What is the reason for using that particular promotion, sir?

* * * * *

A. We try to get a little extra business. Also, to meet some of the competitive situations which are on the market.

Rexford A. Gardiner—Direct

(Tr. p. 2864)

And that deal is for the entire trade.

Q. Now, these various promotions that you have just testified about, sir, are they any aid in increasing the sales of the bleach product?

* * * * *

A. Yes, they are at the time and we hope that they have a little more far reaching effect, that they will still aid us in the future, after the deal.

Q. Now, we have put in a price schedule for your liquid bleach, sir, does your company allow any discount from that or have any discount structure? A. We allow 2% ten days, net 30. That is the only discount that we allow.

* * * * *

(Tr. p. 2866)

* * * * *

Q. Would you tell us, Mr. Gardiner, from your experience in the liquid bleach business, what factors determine the success or the failure of your liquid bleach?

* * * * *

A. Well, I think it is entirely promotion. You have to advertise and keep your product in front of the people and that is it, I think, the biggest factor; the continuous advertising campaign, because although we are the, as we believe, the first in the bleach business of this type, we did have this market at one time 100% and we have slipped way

(Tr. p. 2867)

down from that position and I think it is purely and simply through a continuous advertising, which for some years we were unable to do.

* * * * *

Rexford A. Gardiner—Direct

Q. Now, would you tell us, sir, in setting—let me ask you first, who determines the price that your company will charge for its liquid bleach? A. Well, Cloxox actually determines the price. They have sold—we have sold a little bit higher than they do. In fact, we are higher priced than they are today, actually.

Q. What are you charging today, sir? A. Well, we charge on our half a gallons and gallons, the same price. On the quarts they are selling 10¢ under us in the Erie market.

(Tr. p. 2868)

Q. Let me ask you, what are you selling it for in the Erie area at the present time; quarts? A. \$2.01.

(Tr. p. 2869)

Q. And how long have you been charging that price, sir? A. If I can look to tell you the date—do you want—it is this year. I mean I have it in my notes as to when we changed our price.

Q. Yes, why don't you look, sir.

(At this point the witness referred to a document.)

A. Well, they didn't put it down. That is one thing I must have missed in my checking. Our price was changed, if I remember right, in February of this year.

Hearing Examiner Haycraft: You mean it went up at that time?

The Witness: Yes.

By Mr. Tinch:

Q. And what is the preceding price that you had been charging, the latest price to appear on the price list we

Rexford A. Gardiner—Direct

put in the record here today? A. That was the price as of the end of '57.

Q. Now, do you use any brand names besides "101"?
A. No, 101 is our only name.

Q. Do any of your products besides the bleach, compete with any products of the Procter and Gamble Company, sir?

A. Our liquid detergent

(Tr. p. 2870)

Q. All right, sir, does your company manufacture its bleach or convert bleach concentrate to liquid bleach?

A. We manufacture our own bleach.

Q. Is it a sodium hypochlorite solution? A. Yes, it is.

Q. And what percent, sir? How strong? A. Five and a quarter percent.

Q. And what basically is the remainder of the product?
A. It is inert.

Q. And are you familiar with the other liquid bleaches sold in this area? In your sales area, sir? A. I am with a few of them, yes. There are so many that we don't know about that are made and delivered house to house that we can't keep up with them.

Q. Well, the ones that you know about and are sold in grocery stores, do you know the percentage of sodium hypochlorite that is in them?

(Tr. p. 2871)

A. I believe the Clorox is five and a quarter also. And

Rexford A. Gardiner—Direct.

Sunny Sol, I believe, is the same. I may be mistaken on that, I haven't looked at it for some time.

* * * * *

Q. Mr. Gardiner, are you familiar with the various promotions used in the soap detergent and cleanser industry to sell products such as contests, free premiums, two-for-one-sales, small size free with the purchase of a large, a group of products offered on a special promotion in reduced price, prices off labels and all those promotions?

A. Yes I am.

Q. Is there any reason why any or all of these promotions couldn't be applied to liquid bleach?

* * * * *

A. No, there isn't. I know why I can't do it, though; it is too expensive as far as I am concerned.

* * * * *

(Tr. p. 2872)

* * * * *

Q. Now, sir, will you tell us how your concern goes about obtaining shelf space for its liquid bleach? A. Well actually, we can't do much to obtain it. It is just—you have to take more or less what they give you. They will put it on the shelf.

Hearing Examiner Haycraft: What are you talking about when you say they?

The Witness: The storekeepers.

Hearing Examiner Haycraft: Retail stores?

The Witness: Retail stores, yes, sir.

Hearing Examiner Haycraft: All right, go ahead.

A. The retail stores, they will just give you as much space as they see fit and it doesn't do much good to ask for anything more because they won't give it to us.

Rexford A. Gardiner—Direct

Q. Well, how many liquid bleaches are carried in the general stores in your areas, sir? By general I mean the average, if there is such a thing, maybe there isn't. A.

Well, in this area I believe your chain stores, which are perhaps the biggest factor in our market carry, I think, about three types of bleach; that is three different makes.

* * * * *

Q. What are those makes, sir?

(Tr. p. 2873)

A. 101, Clorox, and either Private Label or Sunny Sol. They vary as to different groups.

* * * * *

Q. Do they carry all sizes of these various brands?

A. Most stores carry all sizes of 101, Clorox; and of the other brands it is sometimes only one size, sometimes more.

Q. Now, does 101 bleach have any unique or special ability or property which aids the— A. No, I don't think so.

Q. And the same question with respect to the other liquid bleaches in your sales area? A. As against Clorox I would say we are no different. As to the other types, they vary in strength. They are generally not uniformly made.

Q. Now, which ones are you speaking of now, sir, the ones you spoke of as being— A. These private brands and some of the other makes are not consistent as to their strength.

Q. Now, do you know what percent of your grocery store business in liquid bleach is sold to chains as contrasted to independent grocers? A. I would say about 51% of our sales go into the major chains. We have independent chains in this area which we cannot break down as to their sales.

Rexford A. Gardiner—Direct

(Tr. p. 2874)

Hearing Examiner Haycraft: I don't understand the answer. He says 51% and then he says he can't break it down.

The Witness: I said in the independent chains; we also have independent chains.

Hearing Examiner Haycraft: Well, that would be the 49%?

The Witness: Yes.

By Mr. Tincher:

(Tr. p. 2875)

Q. Do advertising and promotions such as the various promotions that you have spoken of that your company uses, do those have any effect on the amount of shelf space that you are able to obtain for your bleach? A. I don't think they have much effect on it at all; very little, if any.

(Tr. p. 2877)

Q. Does your company do any test marketing in local communities or areas? A. No, because we are—all of our sales are conducted in Western New York and Western Pennsylvania, and we can't test market in any one area without going into the other area. We can't segregate.

Q. Have you been in this same sales area—or, for how long in the same sales area? A. We have sold in the same sales area since about 1921-22.

Rexford A. Gardiner—Direct

Q. In what sections of the grocery stores in your sales area are the liquid bleaches generally found? A. In the cleansing department, where they have other cleaning items.

* * * * *

(Tr. p. 2878)

* * * * *

Q. Do you have any scientific research facilities? A. Directly, no. We hire that done, or use one of the chemical companies which we purchase supplies from.

* * * * *

Q. From your company's experience, is the production of liquid bleach a very technical process? A. No.

* * * * *

(Tr. p. 2879)

* * * * *

Q. Can you tell us, sir, at approximately what prices they are being sold on the retail grocery shelf at the present time in your retail sales area? A. Gallons are normally running around \$.57 a gallon. Our half gallons are around \$.39—\$.37, and the quarts are around \$.20. I say around—

Hearing Examiner Haycraft: Twenty-what?

The Witness: Twenty cents. I say "around" because of the various markups to the different stores.

By Mr. Tinch:

Q. Those are your prices? A. Yes, sir.

Q. Do you know the prices of the Sunny Sol and the Clorox? A. Clorox ranks the same, and Sunny Sol is normally one to two cents less.

Q. Is this the current price structure you have just given us?

Rexford A. Gardiner—Direct

Hearing Examiner Haycraft: That is the way the question was framed. The original question was so framed.

By Mr. Tincher:

Q. These prices that you have given us for the various
(Tr. p. 2880)

companies—has there been any significant change in that price structure in the last three or four years? A. Yes. The prices have gone up consistently. I mean, almost every year there is a price increase because of the cost of raw ingredients, in bottles and labor.

Q. Is your company producing liquid bleach at full capacity, sir? A. No.

Q. And approximately what percent of capacity is being used? A. I would say we are perhaps 30 percent capacity.

* * * * *

Q. You just mentioned the cost of production having gone up in recent years. Have you passed all these costs on to your customers? A. Not all of them, no.

Q. What determines when you will or what amount you will pass on?

(Tr. p. 2881)

A. We have to more or less follow Clorox's price structure.

* * * * *

Q. Mr. Gardiner,

* * * * *

are you familiar with the fact, sir, that the Procter and Gamble Company of Cincinnati acquired the Clorox Chemical Company about August 1 of 1957? A. Yes, I am.

Q. Let me ask you, sir, what effect, if any, this acquisition will have on the business of the Gardiner Company.

* * * * *

Rexford A. Gardiner—Cross

The Witness: Well, I am scared of it, definitely, because of their larger capacity, purchase, advertising matter—makes it that they can cover the trade at a much lower cost than I can. They have a much larger sales force, which is selling their other products, which can also promote the Clorox. The entire business really scares us because of the possibilities of what could happen.

(Tr. p. 2888)

CROSS EXAMINATION

By Mr. Royall:

(Tr. p. 2889)

Q. Mr. Gardiner, you mentioned that there were a number of other packers' labels in this area. I would like to hand you a list of these, a list entitled, Exhibit 24 and ask you if on there are some of the package labels in your area.

(Tr. p. 2890)

The Witness: Yes, I have heard of some of these.

By Mr. Royall:

Q. Can you tell us which ones you have heard of? A. I have heard of La Stella, Sunny Sol, Radiant, Mali's—but they are not a manufacturer that I know of—I have heard No-Boil, and I believe there was Sno-EE some years ago. Whether that is the same referred to here, I couldn't possibly say.

Rexford A. Gardiner—Cross

Q. Mr. Gardiner, I also show you Respondent's Exhibit 25 for identification entitled, "Private Label Liquid Bleaches Sold in Western and Central New York Area," and ask you if you know those, and, if not, which of those you are familiar with.

* * * * *

(Tr. p. 2891)

* * * * *

A. The only two here that I have heard anything about is Bright Sail, which is the A & P, and Speed Up, which is the American Stores. The others, I don't know anything about.

* * * * *

(Tr. p. 2893)

* * * * *

Q. Do you manufacture, or did you at any time manufacture a two and a half percent bleach? A. Yes.

Q. When did you finally terminate the manufacture of any such bleach. A. I believe it was in 1958 or possibly '53.

* * * * *

(Tr. p. 2895)

* * * * *

Q. Now, have you used Hooker Electrochemical Company for advice and counsel in connection with your product? A. Yes.

Q. And you have been dealing with them for many years, have you not? A. Yes.

* * * * *

Q. Yes, sir. Now, you spoke of some couponing, referring to some you had then in the early part of last year. Was that done through an independent company? A. Yes.

Rexford A. Gardiner—Cross

Q. You also spoke of free goods. Have you used that more or less continuously for the last several years? A. What do you mean by continuously?

Q. I don't mean all the time, but from time to time during

(Tr. p. 2896)

the last several years? A. Yes, we have used it as— for the last few years.

Q. You spoke of radio. Did you not have a five minute radio news program in about 1956 or 1957? A. No, I don't believe we sponsored the news broadcast. I think we just took a spot of it if I remember correctly. Now, I may be a little wrong on that but I don't recall having a whole broadcast.

* * * * *

(Tr. p. 2897)

* * * * *

Q. You know Clorox put a new handle on the bottle, don't you; on the quart bottle? A. Yes.

Q. And didn't they increase their price on that bottle with the new handle, in Buffalo in January, 10¢ a case?

A. I believe that increase was before January, wasn't it? Or at least they came out with it in November or December, I think it was when I first heard about it. Exactly when it went into effect I don't know.

Q. Well, wasn't it the time the new handle was put on the bottle? A. It might have been around that time.

Q. Yes.

Now, at that time, or shortly thereafter did you raise your price on quart bottles 10¢? A. Yes.

Q. And did your bottles have a new handle?

Rexford A. Gardiner—Cross

(Tr. p. 2898)

A. No, they didn't.

* * *

Q. Do you know that the quart bottles of bleach with the new handles has, since the end of 1957, been sold in Erie by A&P or Loblaw or Nu-Way and that the 10¢ price is added to it? A. No, I don't know that as a fact.

Q. You don't know that. And do you know that in those places in Erie where the old bottles without the new handles on the quarts is sold that they still have the lower price without the 10¢ raise? A. I know there is a lower price but I don't know what bottle it is on.

Q. Yes, sir. But you charge in Erie a 10¢ raise, do you not? A. That is correct.

* * *

Q. Have you advertised since about 1955 in a Rochester grocer's CoOp magazine? A. I believe we have.

* * *

(Tr. p. 2900)

* * *

Q. I believe you testified that you subscribed to Beam Cast? A. That's correct.

Q. As far as it is related to Nu-Way store; is that correct? A. Yes.

* * *

Q. Now, are you familiar with the practice of Beam Cast, pasting space reservers on the shelves, under their contract? A. I know they put them up but they are not pasted; they are moveable.

* * *

(Tr. p. 2903)

* * *

Rexford A. Gardiner—Redirect

REDIRECT EXAMINATION

By Mr. Tinch:

Q. Mr. Gardiner, you told Mr. Royall that Bright Sail gets considerable shelf space in A&P? Let me use the same word "considerable" and ask you if Clorox gets considerable shelf space in A&P? A. Yes.

Q. Will you tell us why you changed from 2½% bleach to a five and a quarter percent bleach? A. The competition was such that it was all out in five and

(Tr. p. 2904)

a quarter percent and we had to change because the public demanded it through not buying our product.

Q. All right sir. Now, you have testified in answer to Mr. Royall's question that Clorox has done more advertising than 101 has. Will you tell us why, if there is any reason, you haven't done more advertising for 101? A. I don't feel that we could afford to do more advertising. We are putting in all that we feel we can afford to put into it and we just can't spend any more money.

Q. Now, Mr. Royall asked you if an independent company did the couponing for you; do you recall that? A. Yes.

Q. Will you tell us why you have had an independent company do the couponing rather than do it yourself? A. The reason why we had the independent company is that they could do it cheaper than we could by putting more than one coupon in an envelope; they put one of ours plus some other manufacturer's and that way we split the postage.

Q. And when you do that do you have any control over what other manufacturer would be in with your coupon?

Rexford A. Gardiner—Recross

A. No control other than it would be non-competitive.

Q. Do they also handle the redemption? A. No.

* * * * *

(Tr. p. 2907)

* * * * *

RECROSS

By Mr. Royall:

* * * * *

Q. Now, finally, I will ask you if one of the matters covered by your compensation to Beam Cast is not—is that

(Tr. p. 2908)

Beam Cast items should have as many facings, more, if possible, than any competing item? A. Well—rephrase that question, please.

Q. Beam Cast items should have as many facings, more if possible, than any competing item.

* * * * *

The Witness: They attempt to get that space.

By Mr. Royall:

Q. And isn't another of their objectives: if one shelf location is better than another, the Beam-Cast item should have the spot that will sell the most? A. Yes.

* * * * *

REDIRECT EXAMINATION

By Mr. Tinch:

Q. Do you have any way of knowing whether the objectives

(Tr. p. 2909)

of Beam Cast are realized or not—the objectives that Mr. Royall has just read to you, assuming that is what the ob-

Rexford A. Gardiner—Redirect

jectives are? A. The only thing we have is a report that says how many facings we have. That is the only way I have of knowing anything about it.

* * * * *
(Tr. p. 2912)
* * * * *

Room 410
United States Post Office Building
121 Ellicott Street
Buffalo 3, New York

June 17, 1958

Met, pursuant to notice, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *
(Tr. p. 2914)

Hearing Examiner Haycraft: Are you gentlemen ready?
All right, this hearing will come to order. You may proceed, Mr. Tinch.

* * * * *
J. W. Jones

was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Hearing Examiner Haycraft: Will you give me your full name, please?

The Witness: Jones, J. W.

* * * * *
DIRECT EXAMINATION

By Mr. Deveny:

Q. What company are you affiliated with, Mr. Jones?

A. Jones Chemicals, Incorporated.

J. W. Jones—Direct

(Tr. p. 2915)

Q. And what is your position with that company? A. President.

Q. And how long have you been associated with the company? A. Since 1931.

Q. And how long has the company been in business? A. Since 1931.

Q. And what business is this company engaged in? A. In the manufacture and repacking of miscellaneous chemicals and chemical specialties.

Q. And what would some of those specialties be, sir? A. Chlorine, anhydrous ammonia, sodium hypochlorite, and aqua ammonia, and miscellaneous chemicals.

Q. Does your company produce a household liquid bleach? A. Yes, we produce household liquid bleach.

Q. What is your sales area for your chemicals, sir? A. We cover the United States pretty well, except for Texas and the Northwest such as Washington and Oregon.

Q. Now, is that true for liquid bleach sales? A. No, that is not for—you are talking about liquid bleach?

Q. Yes, sir, the household product. A. It is true for the bulk liquid bleach but it is not true for the household product.

In other words, wherever we have any of our locations we are in the bleach business and that bleach busi-

(Tr. p. 2916)

ness is a bulk bleach business.

Q. Well, let me ask you this, sir. In the non-bulk bleach, the household liquid bleach that your company sells, what area do you sell that in? A. That is sold largely out of Caledonia, originally, but we have franchised the Caledonia end to others who manufacture—who bottle it and

J. W. Jones—Direct

come and get it in tank wagons, or we deliver it to them in tank wagons.

Q. Would that be the bulk, sir. The bulk bleach? A. What we deliver, yes. And they are franchised to use our Sunny Sol trade mark.

* * * * *

(Tr. p. 2917)

Q. Now, apart from that business, sir, does your company sell any actual household liquid bleach, and in what area does it sell that, that alone? A. Yes, in overlapping territories or territories in between areas, which we want to franchise out or have franchised out, we take care of those so-called vacuum spots by selling it ourselves direct through the chain stores or the jobbers, and the only territory of that nature right now is the Utica, Binghamton, Albany area, Norwich, north country.

* * * * *

Q. You produce that where? A. In Caledonia on our own bottling machines, bottle it there in quarts, half gallons and gallons, and ship it on our own trucks to customers in that area.

Q. Now, you mentioned having franchised out some of your production or some of the sales of liquid bleach. When you franchise that trademark, do you have any control or direction over the companies after you enter the franchise agreement? A. No. Our control is purely a quality control in order to safeguard our trademark. We furnish the material,

(Tr. p. 2918)

the concentrate, and they cut it down, and we make periodic checks, not only of the materials at their plant, but also out in the field, as to just how the strength is and the free

J. W. Jones—Direct

caustic of the material, strength of the chlorine, and so forth.

Q. Now, getting back to the household liquid bleach, Mr. Jones, just the household sales, do you advertise this liquid bleach? A. We advertise that in newspapers only.

Q. And how often? A. Generally, every Thursday evening in the evening paper, and if it is a combination, forced combination paper, it would be Thursday evening and Friday morning. Unfortunately, in the area we are in, we are on forced combination deals.

* * * * *

Q. Do you use any other advertising media other than newspapers? A. Not at present.

Q. Why?

(Tr. p. 2919)

* * * * *

A. Our volume just won't stand anything more. We can't afford any other form of promotion.

Q. Would that include radio, TV? A. Yes. We used to be on radio, spent a lot of money on it, but we are now on newspapers only.

Q. Is the advertising necessary for the household liquid bleach sales?

* * * * *

The Witness: Oh, yes. It is absolutely necessary, some kind of promotion.

* * * * *

(Tr. p. 2920)

* * * * *

Q. Why do you feel advertising is necessary?

* * * * *

J. W. Jones—Direct

The Witness: To create consumer acceptance, when she walks down the aisle of the supermarket and picks it off the shelf, that she picks Sunny Sol instead of some other brand.

* * * * *

(Tr. p. 2921)

Q. Well, in getting the sales figures for liquid bleach that you have testified about this morning, would that be in separate records and books of your company, or where would that be located? A. No, we—we are more or less carrying that along with everything else and bulk it right in because it is more or less as I say, a territory we are going to dispose of as soon as we can franchise it out and it is not something we ordinarily keep separate.

Q. Well, have you an idea what those sales would represent in dollars?

* * * * *

Q. Well, do you know what the sales are per year of that business? A. Well, I would say they are not more than \$100,000 so I

(Tr. p. 2922)

don't think it amounts to too much.

* * * * *

(Tr. p. 2925)

Q. Now, Mr. Jones, in your household liquid bleach, do you promote that bleach other than advertising? I mean, do you engage in any price promotion or any promotion of that kind? A. No, not at the present time.

Q. And why not, sir?

* * * * *

A. We just have a small volume existing down there and

J. W. Jones—Direct

we just don't have much to work on, that's all. We put the newspaper ads in and let it go.

* * * * *

(Tr. p. 2926)

* * * * *

Q. And what are the factors, sir, which determine whether or not your liquid bleach sells; what competitive factor determines?

* * * * *

A. Consumer acceptance.

Q. Who are your competitors in this sales area, sir, in the liquid bleach field? A. Clorox and 101. In the eastern area, why, it is Clorox.

Q. Are you familiar with the dry or powdered bleaches? A. Yes.

Q. Do you consider them competitive with your liquid bleach?

* * * * *

A. Yes, they are competitive but statistics will show that only 5% of the people are using powdered bleach now.

* * * * *

(Tr. p. 2927)

Q. How do they compare functionally, sir, in use in washing; the dry and the liquid?

* * * * *

A. The liquid bleach is quicker; more thorough.

Q. Is there quantity comparison in the usage of bleach in laundering between the two?

* * * * *

A. The powdered bleach is generally considered to be about 1/7 as efficient; takes about seven washings to equal

J. W. Jones—Direct

what a liquid bleach would do; in the home. I am speaking about home laundry.

* * * * *

Q. Is the freight cost and the shipping of liquid bleach, household liquid bleach, is that a significant factor in the price of the bleach? A. Yes, it is.

Q. And how significant is that factor, sir? A. On the fringe the territory, the outer edges, it might amount to as high as 30% of the cost that you get from your

(Tr. p. 2928)

wholesaler.

Q. Now, you say the fringe of the areas. What is the limitation placed by freight upon your sales area? A. About 300 miles.

Q. In setting your liquid bleach price, sir, what do you consider in arriving at the prices which are on Exhibit 515? A. You consider your competition.

Q. In making that consideration of the competition how do you price your product? A. Well, we price our product slightly under competition to offset the heavy advertising we are up against.

Q. Is Sunny Sol your only brand name for your liquid bleach that you sell? A. At present, yes.

* * * * *

(Tr. p. 2929)

* * * * *

Q. All right sir, in that conjunction, would you explain what competition meant—what you mean by competition when you were talking about pricing your product? A. Well, if I am in Utica I would mean Clorox and therefore I would be very definitely—naturally, we are in business to make money and we try to put our price up to as high

J. W. Jones—Direct

a point above the cost of glass, labor and transportation as we can, and still get a movement off the shelves, without pricing ourselves out.

(Tr. p. 2932)

Q. Is your bleach a sodium hypochloride solution? A. Yes.

Q. What percentage is your household? A. Five and a quarter.

Q. Are you familiar with the percentage of makeup of your competitors' bleaches? A. Yes.

Q. On what basis are you familiar with them? A. By actual chemical tests.

Q. Are those bleaches similar to yours in sodium hypochloride content? A. Yes.

Q. Is there any difference between those bleaches and your bleach? A. Generally, no.

Q. Can you tell us, sir, the number of bleach producers in your sales territory?

(Tr. p. 2933)

A. There is only one other manufacturer in that area. We don't manufacture in that area. Therefore, I have one manufacturing competitor near Albany.

Q. Who is that? A. Well, that is the—I really don't know the name. It is a small company down there, largely making private brands, down near Albany.

Q. Now, can you tell us, sir, what percentage of your household liquid bleach is sold through grocery stores to the ultimate consumer, if you know? A. I don't know.

J. W. Jones—Direct

It seems to me that all household bleach is sold through grocery stores.

* * * * *

Q. Do you know what percentage of your sales would be going through chains as opposed to independent grocers?

(Tr. p. 2934)

A. I would say 80 percent.

* * * * *

Q. How do you distribute your household liquid bleach?

A. We send it to a chain store warehouse, or to a whole-sale grocer.

* * * * *

Q. Is that by direct sales contact or broker? A. Direct.

Q. Is your price for your bleach—is that a delivered price? A. Delivered.

* * * * *

(Tr. p. 2937)

* * * * *

Q. Now, in selling your household liquid bleach, sir, is shelf space in the grocery stores a problem?

(Tr. p. 2938)

A. Yes.

Q. How do you attempt to get shelf space for your bleach? A. By getting enough of it in the back room so that they want to get it out of the back room, and then onto the shelf. (Laughter). When he gets crowded in the back room, he will put it on the shelf.

Q. What do you use to encourage the people to buy it from the back room?

* * * * *

J. W. Jones—Direct

The Witness: By that newspaper advertising. Frequently, we have a man go around and he will—the storekeeper will say—the supermarket manager will say, “We just haven’t got the help to get them out. We know that shelf is there, and we have a load in the back of the store.” So, our man will get a truck from them and haul up 25 cases or ten cases and get it on the shelf, and then maybe the next week, you will come around and do the same thing, but we find that is pretty hard for the small volume we have in this existing situation that we are going through right now—sort of pre-franchise period—of being able to get into all these stores and do all this work that we would like to do,

(Tr. p. 2939)

because we don’t have a big enough volume.

* * *

Q. Is your advertising extensive enough to allow you to receive any discount rates? A. No.

Q. What rate do you pay for your newspaper advertising? A. We pay the national rate. As I say, they generally make us take these combination deals.

Mr. Royall: What is that?

The Witness: They force the combination deals—take the morning because we want to use the evening. They make us take the morning.

By Mr. Deveny:

Q. Is there a local rate available on newspapers? A. But not to us. They claim we are national. I don’t know why, but they claim we are. I guess if you are national on anything, you are national on everything.

Q. Do you have any TV or radio programs? A. Not at present. A long while ago, I spent a lot of money on radio, but I don’t have it now.

J. W. Jones—Direct

Q. When you used radio, was that programming, or spot type,

(Tr. p. 2940)

or something else? A. Both. We purchased 104 programs at a time from an outfit like, in Chicago, McGregor and Solle Company, say a skit called Eb and Zeb. We run that on radio maybe once a week for two years, but we would have to purchase 104 transcriptions, and it would run approximately twelve minutes and give us three minutes of commercial continuity, but now we don't do that, but we just use this newspaper. We have franchised out this other setup.

* * * * *

(Tr. p. 2941)

* * * * *

Q. In what section of the grocery store will you find household liquid bleach generally in your sales area?

(Tr. p. 2942)

A. In the soap and cleanser department.

* * * * *

Q. Are you producing at full capacity on your household

(Tr. p. 2943)

liquid bleach at Caledonia? A. No.

Q. What is your production period, sir? A. We run about one day every two weeks, something like that.

Q. And what is the basis of running for that period, sir?

A. What was that?

Q. Why do you run on that schedule? A. Well, we just pull men out of the other departments and bring them in and put them on the bottling line and turn that out, to take care—take care of this territory, that's all, and we know we have—we keep up stock and when the stock gets

J. W. Jones—Direct

low we just call some—take them off some other department and put them in there and run the line. As I say, every—sometimes it might run two days in a week and then again we might not; just when our stock gets low.

Q. Is the process of household liquid bleach a technical process? A. Yes.

Q. Is machinery required to produce this an expensive item? A. Yes.

Q. Approximately how much would a setup for a household bleach plant such as yours represent in capital, if you know, sir?

* * * * *

(Tr. p. 2944)

* * * * *

A. Well, I assume that you mean what does the bottle line cost?

Q. Yes, sir, if that is— A. —and also the bleach vats and—

Q. If that comprises— A. —but you don't mean the trucks that carry it away or anything like that?

Q. I was mainly interested in machinery, sir, yes. A. The machinery would cost around—the minimum would be about \$50,000.

Q. Is this machinery that is sold on the open market or is there some custom specifications involved in it? A. It is sold on the open market with the exception of the filler and the fillers are specially constructed to take care of a corrosive material such as bleach.

Q. Do you use a—or can you use that machinery for producing anything else? A. By changing certain parts on the filling machinery you possibly could bottle starch and amonia but it isn't advisable due to the nature of the products.

J. W. Jones—Direct

Q. Have you considered expanding the sales territory that you have remaining in the sales of household liquid bleach? A. We plan to tie that in with another franchised area and

(Tr. p. 2945)

if you mean that as expansion, why yes.

* * * * *

Q. Well, can you tell us, sir, what areas your franchises are located in? A. Well, it is just the areas that we established and started, which is Buffalo and Rochester and Syracuse and Elmira.

Hearing Examiner Haycraft: All in the State of New York?

The Witness: Well, they dip into Pennsylvania; Erie.

Hearing Examiner Haycraft: Pennsylvania, some of it?

(Tr. p. 2946)

The Witness: Yes, and we just franchised that out and we are out of business as far as that is concerned as we either had to build a new plant and get into that form of merchandising, which is a little different from our general run of business, you see.

* * * * *

Q. Are you familiar with the shelf price in the store of your bleach, sir; at what price it is offered?

* * * * *

A. Well generally, I check those prices whenever I am in these different areas and I find that the customers are getting about the same price for ours as they do for Clorox. In fact, generally—however, I do find once in a while they have the price down about a cent a gallon off, or a cent on a half a gallon, or something like that.

* * * * *

J. W. Jones—Direct

(Tr. p. 2947)

* * * * *

Q. When did the company commence producing a household liquid bleach; what year? A. Our company?

Q. Yes. A. 1931.

* * * * *

(Tr. p. 2950)

* * * * *

Q. All right, Mr. Jones, why do you have to consider the price of Clorox and your other competitors in setting your price?

* * * * *

A. It is just an economic situation, that if Clorox is out-advertising me in the market and their price is \$2.01 and they are out-selling me two to one as it is, I probably will go very carefully in jumping my price in that market. If on

(Tr. p. 2951)

the other hand I am selling equal to Clorox and enjoying a good volume I am spending an equal amount of money in newspapers as they are, I think I would be willing to take chance at selling it at an even price. So there you are; it is just a competitive situation based on judgment and analysis of a local situation.

A. Are you familiar with the promotional text used by the soap companies in promoting their products? A. Yes.

In the early days of this business I called on thousands of grocery stores and I have kept in touch with them right along since, and I am pretty well familiar with all the big soap companies methods and it has been interesting to see how they operate in the different markets and the results that they have obtained by these different methods.

1036a

J. W. Jones—Direct

Q. Well now, is liquid bleach, in your opinion, adaptable to these types of promotion? A. Very definitely liquid bleach is.

* * * * *

The Witness: —liquid bleach is used by 95.5% of the housewives in this country and when you get anything so universally used it is very adaptable to merchandising techniques because you have very few misses; everybody is going to be interested up to the extent of 95.%. If you got

(Tr. p. 2952)

a special offer 95.5% of the people are going to be interested in the special offer. If it is powerful enough they are going to be interested immediately, not even to wait until the end of the week.

* * * * *

(Tr. p. 2955)

Q. I asked you, subsequent to reading it in the Wall Street Journal, had you become aware through the dealing in the trade that Procter & Gamble had acquired Clorox?

A. Oh yes. That was—

Q. Well now— A. —that was a very important subject in the trade.

* * * * *

Q. Now, let me ask you, sir, would that acquisition have any effect on your business?

* * * * *

A. Based on my business judgment—

* * * * *

(Tr. p. 2956)

A. —if Clorox—

* * * * *

J. W. Jones—Direct

A. —runs along the way they have been running, in the experience that I have had with them for 27 years, then I feel that my company or any of our associates could meet them in the market place and operate satisfactory as we have in the past. If they become a more aggressive merchandiser, getting away from the newspaper technique of influencing sales through newspaper advertising and go to the more, you might say, dynamic form of merchandising such as only soap people know how to employ, then people like myself would be in trouble.

* * * * *

(Tr. p. 2962)

* * * * *

Mr. Larsen: Mr. Tincher agrees. On the possible recall of Mr. Gardiner, on the basis of the conference we had, we have decided there is no reason for the recall of Mr. Gardiner at this time. One of the factors which we were checking was the sales promotion expense item, which was included on Exhibit 512. We learned from Mr. Gardiner that this expense item concerned (1) occasioned promotions. He described them as specialized instances and usually non-recurring, except probably annually. Included among such promotions were such things as samples for the salesmen, the maintenance of a booth at the county fair, the

(Tr. p. 2963)

employment of demonstrators, purchase of space at home shows, and local special events. Is that substantially correct, Mr. Tincher?

Mr. Tincher: Yes, with the one exception, that the booth and demonstrators were not his, but merely his share as contributed to the booth and demonstrator of his broker.

Mr. Larsen: That is correct.

J. W. Jones—Cross

Now, as to the other item that Mr. Gardiner investigated. It included sponsorship of a five minute newscast. Mr. Gardiner or his office called his advertising agency—I am not certain which—and they advised him that 101 has not sponsored a newscast, but that probably it had employed spot announcements, which were contiguous to the newscast, and on the basis of that information, we accept that as the situation. Is that correct?

Mr. Tincher: That is correct.

* * * * *

(Tr. p. 2967)

* * * * *

CROSS EXAMINATION

By Mr. Royall:

Q. Mr. Jones, I want to ask you just a few questions and there will not be many of them.

Now, your principal business is the manufacturing of Chlorine and other chemicals and the distribution of it, isn't it? A. I don't manufacture Chlorine itself. I manufacture—I buy Chlorine in tank cars.

Q. Tank cars? A. And put it in the smaller vessels.

Q. I see. A. Which I deliver to municipalities and sewage plants.

Q. And on your other chemicals—you have some other chemicals too?

(Tr. p. 2968)

A. We also take ammonia in tank cars and we do the same thing; put them in smaller vessels. And in order to put them in smaller vessels we have to relieve the pressure in which we fill this vessel and instead of blowing these noxious and poisonous gases out into the air we put it into a chemical which has an affinity for the said gases,

J. W. Jones—Cross

making a product which we don't run in a creek, we put into bottles and sell it to grocers; we put it into carboys and sell it to the laundries; or we put it into a bulk tank and sell it to Spring Mills.

(Tr. p. 2969)

* * * * *

Q. You operate that business through one or two companies or several companies, and you have several plants, do you not? A. Yes, we have several plants.

Q. Is the J. W. Jones Company Incorporated of Beach Grove, Indiana, in that operation? A. Yes.

Q. Is that your company? A. Yes.

Q. Is the John Wiley Jones Company of Torrence, California, in that business? A. That is perfect except for the parenthesis, Western Division.

Q. Western Division. Is that the same corporation as here? A. No. That is owned by me, but it is a different corporation.

(Tr. p. 2970)

Q. And that is in the same type of business you have described? A. That is right.

Q. You have plants at Jacksonville, Florida; Charlotte, North Carolina; Beach Grove, Indiana; North Miami, Florida; Torrence, California; and Wyandotte, Michigan in that business, do you not? A. Yes, and St. Petersburg and Caledonia, New York.

Q. Yes. And any others that you can think of? A. We have another company in Utica, New York, Monarch Laboratories and Jones Chemicals at Erie, Pennsylvania.

Q. Yes. They are all engaged in the type of operation you have described on this cross examination? A. Yes.

Q. Let me see. What company was it that you incorporated in Florida in January of '57? A. That was the

J. W. Jones—Cross

Jones Chemicals Incorporated, Southeastern Division. That covered Georgia, Florida, and certain portions of South Carolina.

Q. I see. A. The one at Charlotte is Piedmont Division.

Q. Yes. Now, you said you franchised your liquid bleach business, or a considerable portion of it, to others. Is that right? A. That is purely the household.

(Tr. p. 2971)

Q. I mean the household liquid bleach. A. Yes. We keep control of the liquid bleach business as liquid bleach, no matter where we are. We supply all kinds of people with that. We supply a great many people like our franchise operators, which are more or less just customers that buy liquid bleach from us.

Q. But you sell others liquid bleach, do you not? A. Oh, yes.

Q. And they convert it into household bleach? A. That is what they are called, converters.

Q. Now, the principal territory which you franchised was franchised to the Kleen-Brite Chemical Company? A. Yes.

* * * * *

Hearing Examiner Haycraft: Where are they located?

(Tr. p. 2972)

The Witness: Rochester.

By Mr. Royall:

Q. That was franchised in January of 1957, wasn't it?

A. Just about. I think it was March, '57.

Q. March of '57. And that embraced the Sunny Sol name and household bleach? A. Yes.

J. W. Jones—Cross

Q. Did it also cover private labels, such as Bright Sail sold by the A & P stores and Speed Up sold by the American Stores?

A. We never sold White Sail. We never packed White Sail.

Q. You did sell American Stores? A. Yes. Speed Up—we sold that.

Q. Did you have a Pleezing, P-L-E-E-Z-I-N-G? A. No. That isn't owned by us. I don't know as we packed any of that in recent years. That is owned by Pleezing Corporation of Evanston, Illinois.

(Tr. p. 2974)

Q. Do you know whether the Kleen-Brite supplies A & P, Loblaw, and Grand Union Stores?

The Witness: The last I knew, they were supplying them.

Q. Now, you testified that you, in your present part of the territory that is not franchised to others—you used practically newspaper advertising, nothing else? A. That is right.

Q. Now, when you have the entire territory before franchise,

(Tr. p. 2975)

you used other types, did you not, sir? A. That is right.

Q. You used coupons for one free quart tied in with a radio show, "Musical Clock," on WBEN in Buffalo, did you not? A. I don't ever recall being on the "Musical Clock." Who was the personality on the "Musical Clock"?

J. W. Jones—Cross

Q. I am sorry, sir. A. I wouldn't know.

Q. But you did use it? A. We were on dozens of radios, and I would have to identify—was it Arthur Godfrey, so and so, on WBEN, because the "Musical Clock" as such means nothing to me.

(Tr. p. 2976)

Q. Well, unfortunately I can't give you that answer. We haven't had time— A. I never remember—

Q. I don't want to mislead you, I am just asking you these questions so— A. I never remember using a coupon in connection with any radio advertising in Buffalo. I could be mistaken but I would have to be refreshed on it. It would be before '52 if it was before that anyway.

Q. You would know that, sir? A. Yes.

Q. Did you use in connection with your coupons, a coupon mailing organization called "Brands You Know"? A. No, I don't recall using that.

* * * * *

(Tr. p. 2977)

* * * * *

Q. Do you recall using a coupon mailing organization, whatever its name is, that included not only your product but other leading products?

Mr. Deveny: I object, Your Honor. He testified he didn't recall using any.

Hearing Examiner Haycraft: Over-ruled.

Q. Do you recall that? A. What is the question?

Q. Do you recall using a coupon mailing organization to mail out your coupons and at the same time coupons for Boscul Coffee? A. Yes, I believe we did. That was prior to my franchising this out.

Q. Wasn't this after 1952? A. Yes, I believe you are right.

J. W. Jones—Cross

Q. Yes, sir. A. But that was——

Q. And I am asking—— A. I think that was done in the Rochester area only.

Q. And it also coupled your coupons with coupons of other leading brands did it not? A. I think it was Boscul and Coca-Cola.

(Tr. p. 2978)

Q. Coca-Cola? A. Yes.

Q. Did you—— A. The reason for that is the cheap postal rate that we couldn't get on our own.

* * * * *

Q. Yes. And do you recall in '56 that in the Loblaw stores customers were given 5¢ coupons on quarts, 10¢ coupons on half-gallons and 15¢ coupons on gallons? A. I don't remember anything except they were given a 10¢ coupon on a half a gallon.

* * * * *

Q. Now, do you recall in 1954—'55, that you gave coupons

(Tr. p. 2979)

on household bleach redeemable for nylon hose?

* * * * *

A. No, I don't remember doing that.

Q. You don't remember that.

You remember making an offer in connection with nylon stockings? A. We have had that, and bath towels, in the past. Probably 25 years time; Cannon towels, Cannon—three, what do you call "buy a pair and spare"; something like that. I believe that was even before '52.

Q. Do you recall whether or not you did it on nylon stockings? A. Oh, yes, we did it with hose as well as that.

* * * * *

J. W. Jones—Cross

Q. You gave free goods too, did you not?

(Tr. p. 2980)

A. In connection with what, the consumer?

Q. In connection with the trade, didn't you give one case of bleach free for ten, on several occasions? A. To my knowledge we may have, yes, but I don't know as it was the general practice, except to meet competition or perhaps Clorox was giving a special advertising allowance and where we had to we had to meet it.

Q. Can you give me a single instance in which you used it to meet Clorox? A single date or time when you used it to meet Clorox? A. Well, we—yes. It is usually in—

Q. I don't mean usually, a specific time. A. — April and May of each year.

Q. What year? A. Well, each year when we had a spring cleaning drive.

Q. And you gave in each year you had a spring cleaning— A. Not necessarily. If they came out with a special, or a competitor came out with a cut price—101 had a coupon worth, I believe it was 8¢.

Q. Well, don't you know you did it before Clorox in a number of cases; before they did? A. Clorox has always given a spring deal special.

Q. Yes, but didn't you beat them to it in a number of instances? A. Never.

(Tr. p. 2981)

Q. Are you sure about that? A. Oh, positive. Believe me, I am a little guy and I can't afford to give money away unless I have to.

Q. Now, did you give on other instances one case with five and one case with one? A. I imagine that I have probably given them even better than that if I had to.

J. W. Jones—Cross

Q. Well now, didn't you do it—let me ask you this—
A. And I would do it again if I had to.

Q. On store openings didn't you do it? A. Do what?

Q. Give free goods. A. Sure.

Q. Yes, sir. And did you say this morning, whether or not—
A. Our competitors have given as high as five cases per store to get in.

Q. Who? A. Some of our competitors.

Q. Some of your competitors. Did you use— A.
Just to get in each store. If a chain store had a 100 stores they would give them 500 cases.

Q. Do you remember some of the chains that did that?
A. Well—

Q. Some of the bleach— A. There isn't any chain in America that hasn't accepted it.

(Tr. p. 2982)

Q. But can you name specific bleaches who gave that deal that you just stated? Can you name one of them? I mean just one or two of them? A. That was the general practice upon opening, when they are trying to get in.

(Tr. p. 2983)

Q. . . . Did you use placards in the windows? A. I have used placards in windows, yes.

(Tr. p. 2984)

Q. Now, did you ever use, when you were conducting your business, before the franchises, did you use billboards? A. No.

J. W. Jones—Cross

Q. Road signs? A. Yes.

* * * * *

(Tr. p. 2988)

* * * * *

By Mr. Royall:

Q. I hand you Respondent's exhibit for identification only, No. 30, and ask you if you can identify that as a coupon issued by your company in the year 1955?

I don't want to mislead you. There is a date on it, sir, and I thought you might look at it and—

(Tr. p. 2989)

A. I couldn't swear that it was put out in 1955 because the redemption date says October 1, 1955, but we might have given a year's time and we might have put that out in '54.

Q. Well, '54 or '55? A. Yes.

Q. You identify it as one given in either '54 or '55? A. Yes.

Q. All right, sir. That is all I wanted. A. This features a half a gallon with a handle. They don't have them on quarts.

(Tr. p. 2990)

* * * * *

REDIRECT EXAMINATION

By Mr. Deveny:

Q. Mr. Jones, under couponing your combination with Boscul and Coca Cola, did you have any control over the other products, issuance of coupons? A. None whatever.

J. W. Jones—Redirect

Q. Over the selection of the other products? A. No.

* * * * *

(Tr. p. 2991)

The Witness: The advertising distributing company of Rochester came to us and said, "Your postage for so many thousands, if you do it alone, would be so much under your postal permit. If you will join with us, with Boscul and Coca Cola, you will get it for approximately a third." So, naturally, they are non-competing items. A lady gets in the mail three coupons instead of one. One is on a washing solution, or a bleach. The other is a free coupon for some coffee, and another is for a bottle of coca cola. Each costs us a third. We get the benefit of the promotion, and it is a good deal, where, alone, we couldn't afford to do it. You see, that is the idea. As a small operator, we have to do the things we wouldn't have the money to do otherwise.

By Mr. Deveny:

* * * * *

Q. In a proposition such as that, have you had an opportunity

(Tr. p. 2992)

to coupon along with a soap or cleanser manufacturer?

A. No. We never did do that.

Q. I think you have told Mr. Royall about some couponing that occurred in the past prior to your franchising this Sunny Sol. Why did you coupon? A. Why did we coupon?

Q. Yes. A. The reason for couponing was really to gain distribution in the stores, which ordinarily would demand so much free goods. . . . We weren't. We had to get the women to go in and say, "We want Sunny Sol." So, I had to either go to the churches and get the women's

J. W. Jones—Redirect

clubs in the churches, or I had to go to schools and get the kids to save bottle caps, or I had to give a coupon to the woman that would go into a store and say, "Listen, do you want my trade? If you do, I want this bottle of Sunny Sol that this coupon is good for."

That way, I broke into any spot I wanted to get into without having to give such high allowances to some buyer at some chain store organization, because the housewife is the queen, even to the hardboiled chain store operators. If she wants Sunny Sol brand, she will get it.

Mr. Royall: We move to strike out this statement

(Tr. p. 2993)

that the big chains or big outfits can buy their way in. I move that be stricken:

Hearing Examiner Haycraft: That may go out.

By Mr. Deveny:

Q. Why did you use the towel and nylon premium, sir?

A. After you once get a person using your product, the next thing to do is to keep them coming. You may lack money with which to keep reminding them in expensive media. Therefore, the next best thing to do is to offer them an inducement whereby, by label or bottle caps, if they keep buying your brand after that first inducement, maybe after a couple or three years of getting enough of these labels and enough of these caps, they become a victim of habit, and they will stick with you as long as the old man dies—or lives before he dies.

That is why we used the nylons and the Cannon towels. It kept them coming at a low rate per case.

* * * * *

1049a

John Riccardi—Direct

(Tr. p. 2995)

* * * * *

Court Room No. 711,
United States Post Office and
Court House,
230 West Fort Street,
Detroit, Michigan,

June 24, 1958.

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 2997)

PROCEEDINGS

* * * * *

(Tr. p. 3001)

* * * * *

John Riccardi

was thereupon called as a witness for the Commission
and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Tinch:

Q. Will you state your full name and address, please?

A. John Riccardi?

* * * * *

Q. Mr. Riccardi, would you tell us, please, what com-
pany you are affiliated with? A. Roman Cleanser
Company.

John Riccardi—Direct

Q. Where is that company located? A. 2700 Mc-Nichols.

Q. Here in Detroit?

(Tr. p. 3002)

A. Yes, sir.

Q. What is your position with that company? A. President.

Q. Is that company a corporation? A. It is a corporation; incorporated in 1930.

Q. Is it a public corporation or is it a family corporation? A. Principally family.

Q. Have you ever published, or issued to the public your financial statements, or your sales statements or anything of that nature? A. No, sir, only Dun's; but no one else.

Q. Is that Dun's of Dun & Bradstreet? A. Yes, sir.

Q. How long has your company been in existence, sir? A. 1919.

Q. Were you with it at that time? A. Was I what?

Q. Were you with your company at that time? A. I founded it. I am the founder of it.

Q. You have been with it ever since 1919? A. Ever since.

Q. All right, sir. Now, what products does your company produce and sell? A. Roman Cleanser bleach.

(Tr. p. 3003)

Q. Is that a liquid bleach? A. Yes, sir.

Q. What other products does your company make? A. Well, Romay and Romite. Romay is to wash walls and Romite is to wash windows.

Q. Can you tell us approximately, sir, what percentage of your company's business is liquid bleach? A. About 98 per cent, approximately.

John Riccardi—Direct

Q. Is your liquid bleach a household or industrial type of bleach? A. It is household.

* * * * *

(Tr. p. 3004)

* * * * *

Q. Mr. Riccardi, I will hand you now what has been marked Exhibit 519 for identification——? A. Yes, sir.

Q. (Continuing) ——and I ask you to tell us what it is,

(Tr. p. 3005)

and who prepared it? A. My bookkeeper prepared this, and this is the gross amount of cases at my plant.

Hearing Examiner Haycraft: Is it gross sales?

The Witness: It is gross sales, that is right—1952, 1953, 1954, 1955, 1956 and 1957.

By Mr. Tincher:

Q. Let me ask you, sir, if these figures we are talking about, represent the sales by your company of liquid bleach for the years indicated?

* * * * *

A. Liquid bleach; that is correct.

Q. I would like to call your attention to one thing, sir, and this is just because I am curious: You have just said this concerns your gross sales, but the document is entitled "net sales." I would like to have you look at it and say whatever you wish to say about it. A. My secretary didn't ask what title to give it, and they put that title on themselves, you know. That is gross sales. It represents gross sales in dollars, and not cases.

Q. All right, sir. That being the case, I wonder if you will take a pen and strike out the word "net" and write

John Riccardi—Direct

the word "gross" above it. It is there in the first line.

A. That is right. (Marking on paper.)

(Tr. p. 3006)

Q. Will you put your initials by it, sir? A. That is right. (Writing on paper.)

Q. All right. Thank you, sir.

Mr. Tincher: Mr. Examiner, I offer Commission's Exhibit 519-A for identification in evidence, with the request that it be placed in camera.

(The paper referred to, heretofore marked for identification Commission's Exhibit 519-A, was received in evidence, and placed *in camera*.)

* * * * *

(Tr. p. 3007)

* * * * *

Hearing Examiner Haycraft: What is your understanding of the difference between "gross" and "net"?

The Witness: Well, if it is my gross, it is all of the income, the money I receive, and the net is everything, less two per cent discount and so on.

* * * * *

(Tr. p. 3008)

* * * * *

By Mr. Tincher:

* * * * *

(Tr. p. 3009)

* * * * *

Q. Will you tell us, sir, what the name "Noboil" means; what it is? A. It is a bleach. It is the same way; the same bleach; the same as Roman Cleanser, but a different name. It means do not boil the cloth when you use that.

* * * * *

John Riccardi—Direct

(Tr. p. 3011)

Q. Mr. Riccardi, I hand you Commission's Exhibit 522 for identification and ask you to tell us what that is, and who prepared it?

The Witness: This is the expenditures that the Roman Cleanser Company spent for advertising.

By Mr. Tincher:

Q. All right, sir. Does it include expenditures for promotions? A. Promotions are included.

Q. Who prepared this document, sir? A. My secretary and my bookkeeper, and some other employees there.

(Tr. p. 3012)

Q. Did you request that they prepare the document? A. Yes, I did.

Mr. Tincher: I offer Commission's Exhibit 522 for identification in evidence, and this document should be in camera also. It is a very complete breakdown.

(Tr. p. 3013)

(The paper referred to, heretofore marked for identification Commission's Exhibit 522, was received in evidence.)

(Tr. p. 3020)

Q. Now, Mr. Riccardi, would you tell us where your company produces liquid bleaches; where your production plants are? A. Yes, sir. The main plant is in Detroit, Michigan, located at 2700 West McNichols Road; another one at Griffin, Georgia, and another one at Tampa, Florida, and the recent one at Miami, Florida.

John Riccardi—Direct

Q. Now, why do you have several plants rather than just using one? A. Because we save freight on delivery. It is a convenience.

Q. How does that enter into it? A. Our product is too bulky to carry it over a certain distance. In order to save on freight, we must have a plant, you know, in certain territory, and some others in other territories.

Q. Generally speaking, what is that certain distance you refer to that you can't ship beyond? A. Well, the distance, to make it profitable, you know, there should be one shop about three hundred miles to another, so you will have about 150 miles "radium" to have money in deliveries.

Q. All right, sir. Now, where does your liquid bleach sell, or what are the sales areas for your liquid bleach? A. Well, it is Michigan, Ohio, part of Pennsylvania,

(Tr. p. 3021)

part of Indiana, Georgia, part of—let me see, Florida, and some other state. I don't recall now. Let me see.

Q. Do you sell in either of the Virginias, sir? A. We sell very little in Virginia. We have got a little in West Virginia.

* * *

Q. Do you go as far west as Illinois, sir? A. Illinois?

Q. Yes. A. We go—we have been a few miles from Chicago.

Hearing Examiner Haycraft: Do you cover the whole state of Florida?

The Witness: Not exactly. A part, we can't cover it, because it is too far from the shop. We cover what is convenient.

By Mr. Tinch:

Q. All right, sir. Now, will you tell us how your company advertises its liquid bleaches; what methods do you

John Riccardi—Direct

use? A. Through advertising agencies, through cooperative advertising, through buses and through billboards.

Hearing Examiner Haycraft: That is, newspapers?

The Witness: Newspapers and agencies. That is

(Tr. p. 3022)

newspapers and radio; a little television.

Hearing Examiner Haycraft: Radio spots or programs?

The Witness: Radio spots and television, some times, spots, and newspapers.

By Mr. Tincher:

Q. Do you use any magazines in your advertising, sir?

A. No magazines.

Q. Now, is the advertising that you do in radio enough advertising to enable you to get the maximum discounts that is offered by the radio station? A. No, I couldn't do that. I don't advertise enough to get my full discount.

Q. All right, sir. Now, will you tell us what method your company is using, and has used since 1952, to promote its liquid bleach? A. We used allow ten cents a case to our customer to advertise. We call it cooperative advertising, and besides there is the agency. Our agency advertises according to what I tell it to do. It will be a certain amount per case, more or less. I do not know exactly the amount.

* * * * *

The Witness: May I complete my answer?

(Tr. p. 3023)

Hearing Examiner Haycraft: Yes.

The Witness: That was several years ago? The last two or three years, we have given six cents cooperative advertising to our customers.

John Riccardi—Direct

By Mr. Tincher:

Q. And, why did you change from ten cents to six cents? A. We followed the others.

* * * * *

Q. Let me show you Commission's Exhibit 522, and I will ask you to look at this horizontal column entitled "Sales Promotional Accounts." A. Yes, sir.

Q. And, will you refer first to the coupons and redeemed coupons, and tell us what that is? A. That represents a small part of the amount.

Q. Were those coupons to the housewife? A. Yes. The coupons was very little; not very much. It was 1951, I think. We gave so many thousands and that is all. We found it very complicated to follow through so we quit.

Q. Going on to the next category, "Free Merchandise," what was that? A. Let me see that. Free merchandise. We sold to dealers,

(Tr. p. 3024)

free merchandise. That will be when we offer a new deal as an introduction. We used that as an introduction.

* * * * *

Q. Let me ask you this, sir: Was this free merchandise, free bleach, and, if so, how much merchandise was bought; or was this radio or television? A. No, when we open a deal, we give them one case free to each store, and then we sell it to the wholesaler and the wholesaler sets the amount free to deliver.

Hearing Examiner Haycraft: The wholesaler?

The Witness: Yes. It is a certain amount a case, one case free for each store, and then they start to advertise as an introductory.

John Riccardi—Direct

By Mr. Tinch:

* * * * *

Q. And, what does the ten cent floor stock represent?

(Tr. p. 3025)

A. Some time, a year ago, we had a ten cent deal; the price on a case, and at a certain time, maybe, for four weeks we will sell for ten cents less a case, but we had to cover the floor stock of our client, and they would send us, you know, for the floor stock; they would pay ten cents a case.

Q. All right, sir.

Hearing Examiner Haycraft: I don't understand that.

The Witness: We delivered it, either our salesman or our supervisor, to the people, and they send the amount, you know, because, as you know, on that kind of deal, they take it by machine; what do you call it, the MIB?

By Mr. Tinch:

Q. The IBM? A. Yes.

Q. What does a customer have to do to get that? A. Just count the amount. When a deal begins, he counts the amount of stock he has on hand.

* * * * *

(Tr. p. 3026)

* * * * *

Hearing Examiner Haycraft: How could a customer determine how many cases he could get ten cents on?

The Witness: We trust them. What they have on hand, we know. We examine how much he bought, and from that it would give me an idea, more or less, what he has. They are honest; a lot of people. You know, my—what do you call it—my salesmen and supervisors report, you know.

* * * * *

John Riccardi—Direct

By Mr. Tincher:

Q. Do they have to display your merchandise to get the ten cents a case? Is that what they get it for? A. No. We make the sale, you know, ten cents off, for one month, you know.

Q. For one month? A. For one month.

Q. Yes.

(Tr. p. 3027)

A. And, in order not to lose on the stock they have, we pay them ten cents for the floor stock what they had. When the deal starts, you see.

Q. That is, for the cases they had on hand? A. That is right.

Q. When you started the deal? A. That is right.

* * * * *

Q. All right, sir. Now, let me refer you to the column

(Tr. p. 3028)

marked "\$1.00 Deal." What is that? A. This one dollar deal; some times we introduce something for a dollar; just for the first starter.

Q. Is that a dollar a case? A. A dollar a case, yes, sir.

* * * * *

Hearing Examiner Haycraft: How long does that last?

The Witness: We pay a certain amount for thirty days, four weeks. You know, our month is four weeks, thirteen months to a year. Usually we do that for four weeks; then they pay the regular price.

* * * * *

(Tr. p. 3029)

* * * * *

John Riccardi—Direct

By Mr. Tincher:

Q. I had asked you just before we recessed what this "temporary offer" column represents. Did you find out anything on that? A. Yes, sir. It is for all the places. It is a resume for all the places; some ten cents, some fifteen cents, according to the deal. It is complete, but they have to prove the money was spent.

Q. When you say ten and fifteen cents, you mean so much a case? A. Yes, some ten cents; some for two or three months, and some fifteen cents.

Q. What is this ten and fifteen cents? A. Maybe it is off the price list; ten cents a case off, you see.

Q. All right, sir. Now, in selling your liquid bleaches, has your company given free samples of the bleaches to the housewife? A. Yes, sir, for years, yes, sir. In every deal, we give

(Tr. p. 3030)

it. We used to give three free samples.

* * * * *

Q. Has your company used price reducing labels in selling its bleach, and by that I mean the label that says so many cents off, and the housewife can buy your bleach at so many cents off the regular price? A. We started a deal about two years ago, I think two years ago; two years, in 1956 and 1957; I think so.

Q. In what areas did you use that particular promotion for? A. For all our territory, simultaneously.

* * * * *

(Tr. p. 3031)

Q. In selling your bleach, sir, has your company given any novelties or anything like that to the housewife?

John Riccardi—Direct

A. No, sir, except I remember a pot holder once in a while.

* * * * *

Q. What did the housewife have to do to get the pot holder, sir? A. Nothing. We just gave it as a supplemental, you know; our salesmen distributed them or handed it out to them.

Q. Was the pot holder fastened to a bottle of bleach? A. No. No. In some cases, probably, but very little. Maybe some times our salesmen put it in with a gallon in a few stores, but not every one. Usually the pot holders is handed out to the lady.

* * * * *

Q. And, have you ever had your liquid bleach tied in

(Tr. p. 3032)

with the sale of any other product where, if a person would buy your liquid bleach, she would get another product free or at a reduced price, or if she would buy another product, she would get your liquid bleach free, or at a reduced price? A. To the store or to the housewife?

Q. Either, sir. A. We had a deal of two little bottles of Romite in every gallon as an introductory for this product; so one case of Romite cleanser would contain two bottles with a special case of my design for one month.

Q. The Romite is the window cleanser? A. Two bottles between six bottles of every gallon. That was free.

Q. And Romite is the window cleanser; is that right? A. That is right.

Q. Now, will you tell us why you advertise your liquid bleach, sir? A. Like anything else, you must advertise. It is to let the people know about your product.

John Riccardi—Direct

Q. And, I will ask you the same question as to why you used these various types of promotion that we have been talking about? A. It is for the people to buy more cleanser.

Q. How does having these promotions help people to buy

(Tr. p. 3033)

your cleanser, sir? That is what I am trying to find out. In other words, when you have this special label price or any other promotion, how does that help people to buy your bleach? A. They buy it because they can get it cheaper. They can buy at a certain determined time cheaper, and they will learn about Roman cleanser. They will learn about the product.

* * * * *

(Tr. p. 3035)

* * * * *

Mr. Tinch: I think that is what is causing the trouble, if you will look at it. Mr. Reporter, would you please mark as Commission's Exhibit 527 for identification, a label of Clorox, five cents off the regular price of this bottle. Contents one gallon.

* * * * *

(Tr. p. 3036)

* * * * *

Q. I will hand you now Commission's Exhibit 527 for identification, and point out to you that it refers to the gallon size. A. Yes, sir.

Q. Whereas the previous size was a half gallon? A. That is right.

Q. Which one did you have reference to, the gallon or the half gallon size when you were talking about one of

John Riccardi—Direct

your salesmen? A. I think it was five cents off a gallon.

Q. It was five cents off a gallon? A. Yes, sir.

Mr. Royall: We will admit that it is being used by Clorox in this territory.

* * * * *

(Tr. p. 3037)

* * * * *

By Mr. Tinch:

Q. Mr. Riccardi, is your liquid bleach in the Detroit area being offered at a price off the label at the present time? A. Right now?

Q. Yes, sir. A. Yes, sir.

Q. Sir? A. Yes, sir, it is.

Q. And, how much off the label? A. Seven cents off a gallon.

Q. And, how about quarts and half gallons, sir? A. Nothing.

Q. And, how about the three-quarter gallon size? A. Five cents off the three-quarter gallon size; that is right.

Q. And I think I understand your testimony correctly: Is

(Tr. p. 3038)

this the third straight year that you have had such price off the label situation; this year being 1958? A. If I am correct, it is the third year.

* * * * *

(Tr. p. 3040)

* * * * *

Q. All right. Now, referring to those two names you used, sir, the Roman and the Noboil, what determines which name you will use? A. What place?

John Riccardi—Direct

Q. In any place. A. Detroit has no Noboil. We bought that in Atlanta. We bought a factory and with that name, and we continued with that.

Q. That was the name of the company that was producing the Noboil? A. This town has nothing but the Roman cleanser, but we intend to put the other things in here pretty soon, yes, sir.

Q. All right. To find out, was there a company there selling and producing that product Noboil? A. Yes, sir.

Q. And you bought out that company? A. Yes, sir.

Q. When was that? A. 1950; that is right.

Q. Where was it located? A. Atlanta; Atlanta, Georgia.

Q. Now, has your company ever sold liquid bleach in

(Tr. p. 3041)

pints? A. No, except lately, about a year ago, in Atlanta.

Q. And are you still selling Noboil in pints? A. Very little; yes, sir.

Q. Now, I notice in comparing your price list, sir, Commission's Exhibits 520 and 521, that your Noboil sells at a lower price, generally speaking, and correct me if I am wrong—. A. That is right.

Q. (Continuing) —than Roman cleanser? A. That is right.

Q. Will you tell us the reason for that? A. When I bought the company, there was no fixed price; one price was low, and one price high.

* * * * *

Q. Yes, and the documents we have show that, sir, but what I am asking you now is, why you have continued to

John Riccardi—Direct

sell Noboil at a lower price than you sell Roman? Why is it not all the same price? A. Because Roman cleanser, that is advertised; we give cooperative advertising, and a lot of free samples and so on, while on Noboil there is no advertising at all; just deliver, that is all.

(Tr. p. 3042)

Q. Now, are Noboil and Roman cleanser sold in some of the same areas? A. Yes, sir.

Q. Now, I also notice on this price list, Mr. Riccardi, that you have different prices listed or designated for geographical areas called north, central and south? A. That is right.

Q. Would you explain why you have these different prices in the different territories? A. Well, the old territory has the lowest, the youngest the next price, and then the next youngest a different price, but it is according to the time.

Q. When you say youngest what do you mean? A. A few years.

Q. That the product has been selling in that territory? A. That is right, a few years.

* * * * *

(Tr. p. 3045)

Q. My question was: Do you manufacture it, or do you buy it from someone else? A. We manufacture the bleach.

Q. Is your bleach a sodium hypochloride solution? A. That is correct.

Q. What percentage is your bleach? A. Five and a quarter per cent.

Q. Is that true of both Noboil and Roman Cleanser? A. That is correct.

* * * * *

John Riccardi—Direct

Q. Does your liquid bleach have any special quality or unique feature that makes it better than anybody else's bleach? A. Not exactly.

Q. Does your company produce private label bleaches, sir? A. Not until about a month ago; two months ago, in Miami, Florida.

Q. And, can you tell us what percentage of your liquid bleach is sold in grocery stores? A. How do you mean? I don't understand.

Q. Let me restate it; perhaps that would be better. A. All right.

Q. Is your liquid bleach sold in drug stores and five

(Tr. p. 3046)

and ten cent stores? A. Not drug stores; only the grocery stores.

Q. Do you have any idea how much of your liquid bleach is sold in chain stores rather than in independent stores? A. Approximately sixty per cent.

Q. And, when I use the word "chain," I should have explained; four or more stores. A. Four or more stores?

Q. Four or more stores? A. Yes.

Q. What liquid bleach producer is your principal competitor? A. Clorox and some small one.

* * * * *

Q. Now, in selling your liquid bleach do you pay the freight on the bleach to your customers' locations? A. Correct.

Q. Do you have a market research department in your company? A. No, sir. The newspapers; what we get from newspapers

(Tr. p. 3047)

and magazines.

John Riccardi—Direct

Q. What magazines do you have reference to, sir? A. I think it is the newspapers. I couldn't recall the magazine.

* * * * *

Q. Now, how does your company, sir, go about either getting more shelf space for liquid bleach or an increased

(Tr. p. 3048)

amount of shelf space than it already has? A. That is something that I can not answer. It is up to the grocer; what he wants to give us. I can not answer that. There is no certain way to get it.

Q. Let me ask you this, sir: What do you do to try to influence the grocer? A. Promote sales, and then he will probably give me more shelf space.

Q. Those are the various promotions we were talking about earlier that you have used? A. That is right, to get more space, because I was a grocer at one time myself, but it is related to the amount; how fast the product goes, you know, and they accord the amount of space relative to the sales they make.

Q. All right, sir. What determines how fast the product will go? A. That is according, you know, to how fast, or how old it is on the market, and if you keep it before the public by advertising.

Q. Now, in selling your liquid bleach, do you use brand pennants or window bolsters or anything like that? A. We had it before; not now any more. We have, what do you call it, signs, you know, painted signs, billboards and things like that.

Q. Why have you discontinued the brand pennants and window

(Tr. p. 3049)

bolsters? A. Because we changed. Sometimes they

John Riccardi—Direct

bothered so frequently, and it doesn't pay neither because the grocer don't want to be bothered any more.

Q. Are you familiar with the new type of handles that are on the Purex and Clorox quart sizes? A. They told me, yes, sir.

Q. Have you seen them yourself, sir? A. I have seen them. They brought a bottle from the south, I think.

Q. Has your company, since 1952, placed any new handles on its bottles? A. No. I tried a new handle about three years ago; about three years ago.

Q. I didn't quite follow you there. A. I started with one on my quart size, with a handle, about three years ago. It was my own idea.

Q. Was that a new type of handle, sir? A. A new type, yes, sir.

Q. What was the difference about the new type than the old type? A. There was an old type. It never was on the quart size. It wasn't like that. There never was a handle on the quart size, I believe, but if there was, it wasn't as good as the one that I originated.

(Tr. p. 3050)

Q. Was that before the Purex and the Clorox companies had the handle? A. Oh, yes, much before, yes.

Q. Now, does your company have any special promotions or sales drives in the spring or fall of the year for liquid bleach? A. Annually, we always have something. We either have ten cents off or now we have so much off a label on gallons.

Q. And, how long will that drive continue, sir? A. Usually one month or four weeks.

Q. Does your company have any scientific research facilities? A. Not exactly, no.

John Riccardi—Direct

Q. When you say "not exactly," what do you mean?
A. Well, I mean that we make a bleach, and, of course, now, we have our chemist down at Miami. He works on

(Tr. p. 3051)

research now, but not before, no, we never had.

* * * * *

Q. Can you tell us—Let us take the City of Detroit, sir: how does the price for your Roman cleanser on the grocer's shelf compare with the price of Clorox? A. The price; you mean the product?

Q. Yes. A. The product?

Q. Yes. A. It is almost the same; some of it sells for a penny more and some others sell for just the same.

(Tr. p. 3052)

Q. Now, let me ask you about another situation; For example, how about Memphis, Tennessee, the same question as to what the grocer generally charges for Clorox and what he charges generally for Roman cleanser? A. Roman cleanser in Memphis is a lower price. We sell a little lower there.

Q. Now, let me ask you the same question, sir, with reference to Atlanta, Georgia, as to, generally speaking, what the grocer charges for your product and for Clorox? A. They charge cheaper.

Q. They charge cheaper? A. Yes, because we sell cheaper, you see.

Hearing Examiner Haycraft: Do you sell both Roman Cleanser and Noboil in Atlanta?

The Witness: Yes, sir.

Hearing Examiner Haycraft: Are they both lower than Clorox?

The Witness: Both are lower than Clorox, yes, sir.

John Riccardi—Direct

Hearing Examiner Haycraft: Noboil is lower than Roman Cleanser?

The Witness: Noboil is lower than Roman Cleanser, because it is not advertised there. We just make it, sell it, and deliver; that is all.

By Mr. Tincher:

(Tr. p. 3053)

Q. How about in Nashville? A. The same price. They ask the same price as Atlanta?

Q. And that is where your's is cheaper than Clorox?

A. That is right.

Q. And Noboil is still cheaper? A. That is right.

Q. Is there any city in your sales area or in any rural community where—as far as that is concerned—that you know of, where your bleach sells for more than Clorox on the grocer's shelf? A. I never hear that. It might be, but I never hear that, no.

Q. Does your company have any interest in or any control over other liquid bleach producers? A. No, sir.

(Tr. p. 3054)

Q. Certainly not. You just told us that since 1952 your costs of production and distribution have gone up? A. Yes, sir.

Q. Now, my question is: Have you been able to pass on all of those increased costs to your customers since 1952, sir? A. Yes, from time to time.

Q. Can you tell us, sir, the first year when your company actually commenced producing liquid bleach? A. 1918; at the end of 1918. In 1919, I started to distribute.

Q. And was anyone else distributing at that time? A. Not in Detroit, there wasn't nobody. Nobody knew anything about the bleach.

John Riccardi—Direct

Q. Did you start in Detroit only? You weren't selling any place else? A. Yes, sir, that is correct.

Q. That is correct? A. Yes, sir.

Q. Mr. Riccardi, you say that you are using the price off label in Detroit at the present time? A. Yes, sir, at the present time, for four weeks.

Q. For four weeks? A. Yes, sir.

Q. When will that period be over?

(Tr. p. 3056)

A. The 23rd of this month, it will be four weeks after—July.

Q. It just started yesterday? A. July 21st, I think, if I am correct.

Q. Mr. Riccardi, are you familiar with the fact that The Procter & Gamble Company purchased the Clórox Chemical Company? A. Yes, sir.

Q. Last fall? A. Yes, sir.

Q. You are aware of that? A. Yes, sir.

Q. What effect, if any, will that have on your business in selling liquid bleach? A. Now, I don't see any changes.

Q. You don't see any changes, you say? A. Now, it is the same as it was before.

(Tr. p. 3060)

Q. Mr. Riccardi, are your plants, altogether, are they

(Tr. p. 3061)

producing at full capacity? A. No, sir.

Q. Can you tell us approximately at what capacity they are producing? A. The capacity hours are about over,

John Riccardi—Cross

about. My men work about forty hours a week. I would like to produce very much more. I have the machinery to produce much more, twice the amount, if we want to in the Detroit plant. In others, I can produce even more.

(Tr. p. 3062)

CROSS EXAMINATION

By Mr. Royall:

Q. You mentioned the territory you cover. Do you cover any part of Kentucky? A. Yes, I do. That I didn't remember at the time.

Q. Now, did you mention the bottling plant and warehouse at Tampa, Florida? A. We manufacture there, yes.

Q. You manufacture there? A. Yes, sir.

Q. All right, sir. A. We manufacture there.

Q. You acquired the Miami plant in June, 1958, did you not? A. The Miami plant was acquired several months ago.

Q. Several months ago? A. The date I don't recall, but it was in March or April.

Q. In March or April? A. Of this year.

(Tr. p. 3063)

Q. Of this year, 1958? A. Yes, we bought it in March.

Hearing Examiner Haycraft: You weren't in that market in 1956 or 1957?

The Witness: I was in that market, in Miami. I was in that market. I was serving it from Tampa.

John Riccardi—Cross

By Mr. Royall:

Q. Now, I believe you have acquired some land for use near Cincinnati, at Lawrenceburg, Indiana? A. Yes, sir.

Q. Is that correct? A. That is right.

Q. Sixteen acres? A. That is right.

Q. Now, you stated, I believe, that you started business in 1918 or 1919? A. In 1918. I started distributing in 1919.

Q. You started with very little capital? A. Very—a few thousands.

Q. Not too much capital? A. Quite a few thousands, though; not so much.

Q. Now, the net worth of your company is about \$1,200,000, isn't it?

* * * * *

(Tr. p. 3064)

* * * * *

A. The net worth is more than that.

* * * * *

Q. Would it be a million and a half? A. More than that.

Q. Two million? A. Approximately that; a little less.

Q. Approximately two millions? A. Yes.

Q. Now, during that period that you have been in operation, and since your incorporation, you have paid dividends, have you not? A. Sure.

Q. And, your dividends have increased until they are about seventy-five or one hundred thousand dollars a year? A. Oh, more than that.

* * * * *

(Tr. p. 3065)

* * * * *

John Riccardi—Cross

Q. You say it is over that? A. I would say the dividends are one hundred to a hundred and twenty-five thousand dollars a year. I do not know that now I do not know.

Q. All right. Now, what have been the general—strike that question, please. Your principal market is the Detroit area, is it not? A. That is right, vicinity and Michigan.

Q. Is it not a fact that in the last year conditions of employment have been bad here? A. That is right.

* * * * *

Q. Has that not affected the volume of all business, including your own? A. Yes.

Mr. Tinchier: Wait a minute. I object to that,

(Tr. p. 3066)

your Honor.

Hearing Examiner Haycraft: Overruled. It is bound to have its effect upon the figures.

Mr. Tinchier: Yes, if established through correct channels if such be the fact.

Hearing Examiner Haycraft: I will almost take judicial notice of that.

* * * * *

(Tr. p. 3067)

* * * * *

Q. Now, you spoke of making a private bleach; private label bleach in Miami.

(Tr. p. 3068)

A. That is right.

Q. What is the name of it, do you recall? A. We make that for the Food Fair. Exactly the name, I do not recall.

* * * * *

John Riccardi—Cross

Q. Now, there are a good many private label bleaches sold in your territory, are there not?

* * * *

Q. And a good many of them are sold to the large chains, are they not? A. Yes, sir.

* * * *

(Tr. p. 3071)

* * * *

Q. Now, I will hand the witness this Respondent's Exhibit 31 for identification, which purports to be a list of the private label bleaches sold in the territory described by the witness, and I have asked the witness to identify it, which he knew, and recognized, and he said he would have to have your assistance, Mr. Lancaster.

* * * *

(Tr. p. 3073)

* * * *

A. Bright Sail, A & P; Gardner and Stowell; Bright Sail again, A & P; Clarion; then again Bright Sail, for A & P; Best White, Blue Grass, Blue Grass, Chlorite; Kroger's again; Park View, Park View Stores in Cincinnati; Del Haven; local jobber in Cincinnati; Dot, Jansen; Emery is Associated Grocers; White Cap is Albert's price label; Cleveland; Bright Sail, A & P; Shirley Ann, I do not know. Bright Sail, A & P, Atlanta; Bright Sail, A & P; Energy, A. G. Stores, independent.

Southern Manor, Colonial. Sparkling White, I do not know. Bright Sail, A & P, Jack and Jill, Indianapolis; Bright Sail, Jack and Jill packed by Fulker in Dayton, Ohio; White Cap is Alberts; Jackson Special is National Food Stores in Indianapolis, Indiana. Pay Day, I do not know.

John Riccardi—Cross

Now, Louisville, Kentucky, Bright Sail, A & P; Hy. Clo by Kroger; White Arrow is Dixie. Miami, Bright Sail, A & P; Fyne Tex, Food Fair.

* * * * *

(Tr. p. 3074)

The Witness: Blue Ribbon. We are not in Peoria. Saginaw, Bright Sail, A & P; Tampa, Florida, Bright Sail, A & P; Fyne Tex, Food Fair. White Arrow, Dixie; White Arrow. Toledo, Riddle's Old Mission. I never heard of Thompson.

* * * * *

(Tr. p. 3075)

* * * * *

By Mr. Royall:

Q. I mean, you sell more of your brand here than anybody else sells in Detroit, do you not?

* * * * *

A. Can I answer that?

Q. Yes. A. The largest share in Detroit here?

(Tr. p. 3076)

Q. Yes. A. Not always; not in every place.

Q. Not in every place? A. In Detroit, yes; not in every place.

* * * * *

(Tr. p. 3079)

* * * * *

Q. Didn't you have free goods in Kroger's on May 25, 1956? A. The time, again? And the town?

Q. In Atlanta, on May 25, 1956?

John Riccardi—Cross

Mr. Lancaster: I think what you are referring to there are pint free samples.

The Witness: Free samples.

By Mr. Royall:

Q. Free samples? A. Yes, for store opening.

* * * * *

(Tr. p. 3080)

* * * * *

Q. One free pint with a quart at Colonial Stores in Atlanta on October 18, 1956? A. No. The trouble is, they request it for a store opening, and we give them a certain amount when the store opens. They have the clerk to give one bottle combined with one sale.

Q. Didn't you do that in other stores also? A. Each one gave the same; gave the same quantity.

Q. Now, in 1956, didn't you give five cents off on gallons or half gallons and three-quarter gallons and gallons from September to December, in Akron, Atlanta, Cincinnati, Cleveland, Columbus, Grand Rapids, Jacksonville, and Charleston, West Virginia? A. Yes, sir.

Q. Saginaw and Toledo? A. Yes, sir; off label or off the price?

Q. Off label or off the price? A. I don't recall that.

Q. You don't recall that? A. No, sir.

Mr. Royall: I don't want to put on evidence to

(Tr. p. 3081)

contradict this witness.

Mr. Lancaster: Let me straighten that out for you. We had a general deal of five cents off label on three-quarter gallons and gallons, but not half gallons in all territories in the latter part of the year.

The Witness: That is right.

John Riccardi—Cross

By Mr. Royall:

Q. Off label? A. Yes, sir.

* * * * *

Q. Now, did you have a promotional allowance in Atlanta in October, 1956, of 35 cents per case of three-quarter gallons, and twenty-five cents per case on gallons?

A. Off labels, you say?

Q. That is off label? A. Thirty and five is evidently the thirty-five cents. That is off label.

Q. Now, did you have a price off label of five cents on gallons, halves and three-quarters in September and December, 1957, on a large part of your territory?

Mr. Lancaster: It was on the same deal as in 1956. Five cents on three-quarter gallons and gallons only, and it was in the month of November; a four week

(Tr. p. 3082)

period again.

Mr. Tinch: November, you say?

Mr. Lancaster: Yes.

By Mr. Royall:

Q. Now, did you give pints with purchases of another size in the Kroger Stores and in the Campbellton Plaza Stores, and in Atlanta in February or March of 1957?

A. No.

Mr. Lancaster: No, not directly. That may have been the local man's idea of it, or the clerk's.

By Mr. Royall:

Q. But you didn't give free goods?

Mr. Lancaster: We gave them but not in that way.

Mr. Royall: But you gave them free goods and they put them up; is that right?

John Riccardi—Cross

The Witness: I do not know if we did, and I know we wouldn't have given it to them.

By Mr. Royall:

Q. But you gave them a free pint? A. They requested it through the broker for the store opening. O'K for so many cases, you know, and that is it. That is the way I will do it.

Q. But you did give it to the brokers for them? A. To go direct to the customer. A request by the broker prior to a store opening only.

(Tr. p. 3083).

Q. And your household cleaning campaigns, were they in the fall only? A. They might be in the spring, and the fall some times.

Q. In the same year? A. How the year goes.

Q. In the same year? A. It might be.

Q. Now, do you recall whether they were or not in 1957? A. We had one five cents off in November.

Q. You did not have any in the spring of 1957? A. No.

Q. All right. Now, in 1958, did you have this same free pint bottle situation which you have described, at Cincinnati and Cleveland—in March of 1958? A. This was only for store openings.

Q. That was only for store openings? A. Even today we have a rule over there that when they open a store, we send so many cases free of pints to give away.

Q. Now, did you have in 1958 an eighteen cents per case off promotional allowance in Florida? A. Correct—no, six plus twelve.

Q. Yes, six plus twelve. A. That is the place, yes, we had it; one quarter.

John Riccardi—Cross

Q. Now, did you have a five cent price off label in

(Tr. p. 3084)

Cleveland, Columbus and Asheville in March of 1958?

A. No. In 1958, we are just beginning now.

Mr. Lancaster: We just started yesterday.

By Mr. Royall:

Q. Yesterday?

Mr. Lancaster: Yes.

By Mr. Royall:

Q. I see. Now, did you at any time give one free with six? A. That is a long time ago in the south. That is introductory.

Q. Now, in using your various promotions, did you vary them from time to time? A. According to what is best.

Q. It is best at times to have variety, and to change them, is it not? A. That is correct, yes.

Q. Now, on this exhibit which is marked Complainant's Exhibit No. 522, which was put in by the Commission's counsel, I notice a column called "1 with 6." A. That is right.

Q. Now—— A. (Interposing) That is introductory, years ago, yes, sir.

Q. It was as late as 1954, wasn't it?

(Tr. p. 3085)

A. That is right.

Q. Is that right? A. Yes.

Q. And, some in 1956? A. That I do not know, in 1956, when it took effect. I do not know. Maybe. There is a man in our office for that, like I told you.

* * * * *

John Riccardi—Cross.

(Tr. p. 3086)

Q. Now, do you know what this general miscellaneous is? A. Yes, I do know that.

Q. Tell us about that. A. Well, it might be a clock, or what do you call it, a big thermometer; it might be a pot holder. Some times we will give little things as a present like some pencils to mark their grocery list; things like that, and a case knife.

Q. What is that? A. A case knife.

Q. Now, is it right that you raised the price in the northern party of your territory on February 17th of this year? A. Yes, that is right; yes, sir.

(Tr. p. 3091)

REDIRECT EXAMINATION

(Tr. p. 3094)

By Mr. Tinch:

Q. Now, when you have the price off the label, is that to new stores only, or is that to all stores? A. All stores. That goes for everybody.

(Tr. p. 3095)

Q. Now, sir, would you answer the question the Examiner just asked as to how you sell this liquid bleach; whether you use brokers or whether you use salesmen? A. We have in Michigan—Michigan consists about half where we have no broker, and the other half goes through the broker, you see. And then in the south, right near some places, it is mostly brokers, but the little places, some times we do it ourselves.

John Riccardi—Redirect

Q. When you say the little places, do you mean the rural areas? A. Well, some times you can't find a broker and we do it ourselves, but the majority down south, almost all of it, is under brokers.

Q. How about the City of Detroit? A. Detroit is not. Some part of Michigan there is no broker and the other is under a broker, because we have had a salesman for a long time, and I don't want to fire him, you know. I keep him instead, but we have brokers up there.

* * * * *

(Tr. p. 3096)

* * * * *

Mr. Tincher: Your Honor, at this time, I would like to have marked for identification as our Exhibit 519B, a one page document showing Roman Cleanser and

(Tr. p. 3097).

Noboil sales by cases.

* * * * *

Hearing Examiner Haycraft: Do you offer it at this time?

Mr. Tincher: Yes, sir.

Hearing Examiner Haycraft: There being no objection, Exhibit 519-B will be received in evidence, in camera.

* * * * *

(Tr. p. 3102)

* * * * *

Room 511-C
United States Court House
Foley Square
New York, New York
June 25, 1958

Met, pursuant to notice, at 2:00 p.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

Paul C. Olsen—Direct

(Tr. p. 3103)

PROCEEDINGS

* * * * *

Paul C. Olsen

was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Hearing Examiner Haycraft: Will you give me your full name and address?

The Witness: Paul C. Olsen. 14 Sutton Place South, New York City.

DIRECT EXAMINATION

By Mr. Deveny:

Q. Dr. Olsen, will you tell us what company you are associated with? A. I am director of Marketing Research of Topics Publishing Company.

(Tr. p. 3104)

Q. What are the publications of that company, sir? A. We have five. Food Topics, Food Field Reporter, Drug Topics, Drug Trade News and Forecast for Home Economics.

Q. What do the "Food Topics" and the "Food Field Reporter" publications deal with, sir? A. "Food Topics" is addressed to retail grocers and "Food Field Reporter" is addressed to manufacturers and other suppliers in the food field and to other persons who have a concern with food products.

* * * * *

(Tr. p. 3144)

* * * * *

Q. I will hand you Commission's Exhibit 529 for iden-

Paul C. Olsen—Direct

tification, Dr. Olsen, and ask you, are you familiar with that document? A. Yes.

Q. Can you describe that document for us, please, sir, briefly? A. This document is reprinted from the September 16, 1957 issue of "Food Field Reporter" and lists, where available, the sales manufacturing costs, earnings before taxes, taxes on earnings and after taxes of those corporations which are publicly held and issue such figures in the various categories which we regard as in the food trade.

Q. Were those prepared at your direction and under your supervision, sir, those compilations? A. Yes.

Q. That was published in—is this the document that you referred to prior to my marking the document? Is this the document you referred to being made up from Moody's and Standard & Poor's available financial statistics? A. Yes. I want to emphasize, it is not an original work. It is merely bringing together of previously published

(Tr. p. 3145)

figures.

Mr. Deveny: Your Honor, we offer 529 at this time.

Mr. Deveny: Your Honor, may I amend my offer? I will limit the offer, Your Honor, to page 1 and the chart thereon showing 25 top earning grocery manufacturers in 1956.

(Tr. p. 3146)

(The document heretofore marked Commission's Exhibit 529 for identification was received in evidence.)

Samuel Mendleson—Direct

(Tr. p. 3147)

* * * * *

Room 511-A
United States Court House
Foley Square
New York, New York

June 26, 1958

Met, pursuant to adjournment, at 2:00 p.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 3148)

PROCEEDINGS

* * * * *

Samuel Mendleson

was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Hearing Examiner Haycraft: Give me your full name and residence address.

The Witness: Samuel Mendleson.

* * * * *

DIRECT EXAMINATION

By Mr. Tincher:

Q. Mr. Mendleson, what company are you with, sir?

A. B. T. Babbitt, Inc.

Hearing Examiner Haycraft: What was that name?

The Witness: B. T. Babbitt, Inc.

Q. What is your position with that company, sir? A.

I am chairman of the Board and treasurer.

Q. How long have you been with the Babbitt Company?

Samuel Mendleson—Direct

A. Thirty-eight years.

Q. What other positions have you held in the company besides

(Tr. p. 3149)

your present one, sir? A. For seven years prior to this year I was president. For five years prior to that, I was chairman of the Board and vice-president.

Q. What products does your company produce or what activities does it engage in? A. We are engaged in the manufacture and sale of household cleaning products. Bab-O Cleanser, Glim Liquid Detergent. Various brands of lye. Aerosol products, insecticides, Hep Oven Cleaner. Air-Gene Room Deodorant and others. Vano Starch and others.

Q. Has your company produced a liquid bleach? A. Yes.

Q. Does your company have a principal product, sir? A. Our principal product is Bab-O.

Q. And approximately what percentage of your company's business is accounted for by the sales of Bab-O? A. Approximately 40%.

Q. Where is your liquid bleach produced, where has it been produced, sir? A. Oakland, California.

Q. Under what name? A. Vano.

* * * * *

(Tr. p. 3150)

* * * * *

Q. How long has the production of Vano Bleach been under the control of the Babbitt Company? A. Since August, 1956.

Q. What were the circumstances, sir, that created that control? A. We acquired the Chemicals, Inc. in August, 1956. It was one of Chemicals, Inc.'s products.

Samuel Mendleson—Direct

Q. Is Vano Liquid Bleach a household or an industrial type of— A. (Interposing) Household.

Q. And is it produced only in the one location at Oakland? A. Oakland only.

Q. Where has Vano Liquid Bleach been sold, sir, by your company? A. In the immediate area of San Francisco, Oakland. Perhaps shipped out two hundred miles.

Q. What has determined, sir, the sales area of the liquid bleach? A. I didn't hear the question.

Q. What has determined the sales area of the liquid bleach? A. The freight cost is the determining factor in the area that we can serve out of that plant.

Q. Has the Vano Liquid Bleach been sold through brokers or by direct salesmen?

(Tr. p. 3151)

A. Direct sales. Direct salesmen.

* * * * *

Q. I hand you what has been marked as Commission's Exhibit 530, and I will ask you if you can tell us what that is? A. This is a memorandum showing the sales of Vano Liquid Bleach by cases for the years 1952 to 1957, inclusive,

(Tr. p. 3152)

covering both quarts and half gallons.

Q. Was that prepared at your direction in answer to the subpoena, sir? A. Yes.

Mr. Tincher: I offer Commission's Exhibit 530 for identification, sir.

* * * * *

(Tr. p. 3153)

* * * * *

Samuel Mendleson—Direct

By Mr. Tincher:

Q. I notice some figures appearing here for the years '55 and '56, which do not appear for other years.

Will you tell us without revealing the figures themselves what those figures represent, why they are there? A. The figures in the parenthesis here are out of the total of the year's sales and show the number of cases sold in that year on a 10% discount basis.

(Tr. p. 3154)

* * * * *

(Document referred to, heretofore marked Commission's Exhibit 530 for identification, was received

(Tr. p. 3155)

in evidence in camera.)

* * * * *

By Mr. Tincher:

Q. I hand you Commission's Exhibit 531 for identification, and I ask you if you can tell us what the information contained thereon is? A. This is a wholesale price list of Vano Liquid Bleach covering the case containing 12 quarts, the price in effect, January to June, '56, the price in effect July, '56 to August, '57, and the price put into effect on August, '57. Also prices of the Vano Liquid Bleach which is packed six half-gallon bottles to the case and the prices for the same period.

Q. Was that prepared at your request and direction, sir? A. Yes, sir.

Q. Has Vano Liquid Bleach been sold by your company since it had control over it in anything other than the quart and half-gallon size? A. No.

* * * * *

Samuel Mendleson—Direct

(Tr. p. 3156)

Mr. Tincher: I offer Commission's Exhibit 531 for identification, sir.

(Tr. p. 3157)

(Document referred to, heretofore marked Commission's Exhibit 531 for identification, was received in evidence.)

(Tr. p. 3163)

Q. Mr. Mendleson, I will hand you Commission's Exhibits 534 through 536 for identification, and ask you to tell us what those are, sir? A. These are the annual reports of B. T. Babbitt, Inc., for the years 1955, 1956, and 1957.

Q. Are those reported on a calendar year, rather than a fiscal year, sir? A. On a calendar year.

Mr. Tincher: I offer the exhibits at this time, sir.

(Tr. p. 3167)

(Documents referred to, heretofore marked Commission's Exhibits 534 and 535 for identification, were received in evidence.)

By Mr. Tincher:

Q. Mr. Mendleson, have you advertised the Bab-O Liquid—

(Tr. p. 3168)

Vano Liquid Bleach since you have had it? A. No. There has been no advertising except a cooperative adver-

Samuel Mendleson—Direct

tising plan which was minute. The most money spent on the plan, on the cooperative plan since we acquired the product was \$500 in one year.

Q. Is there any reason for not advertising it? A. We were not prepared to make investment spending in attempting to establish the brand as a household trademark with the housewives' acceptance.

Q. Have you promoted the Vano Liquid Bleach since you have had it and by that, I mean, any type of promotion which would reduce the price of the bleach to the housewife or offer her something in addition to the product? A. I know of one occasion when for a short period we allowed 10% off the list price. Also we have had an on-the-label-premium offer which was a self-liquidater.

Q. Was that the extent of the promotion of the product, sir? A. Yes.

Q. Now, have you granted your liquid bleach customers' price discounts for quantity purchases? A. Yes.

Q. What's the theory in doing that, sir? A. There are savings to be effected by larger sales in that you can combine the product with other products and make up straight carloads and straight truckloads and thereby effect

(Tr. p. 3169)

freight savings.

Q. Is that freight savings to you as the producer? A. Yes. The products are on a delivered basis.

Q. What per cent did you grant on that quantity discount, sir, to your customers? A. The price list shows. I don't know offhand.

Q. While you have had the Vano Liquid Bleach, have you received any in-store promotions of that product? A. Practically none.

Samuel Mendleson—Direct

(Tr. p. 3170)

* * * * *

Q. What have been the market factors which determine whether or not Vano Liquid Bleach sells well?

* * * * *

A. I think Vano Liquid Bleach would sell well or not sell well depending upon the amount of advertising and promotional support it received.

In order to establish a franchise for your product, it must have consumer acceptance, and assuming that the product is a good product, the only way that you can create consumer acceptance is by advertising and various types of promotions such as couponing, sampling, et cetera.

* * * * *

(Tr. p. 3171)

Q. In the Vano Liquid Bleach sales area, who were the competitors in liquid bleach, sir? A. Well, the principal competition was from Clorox Liquid Bleach and Purex Liquid Bleach.

Q. Does your company sell a dry or a powdered bleach? A. Yes.

Q. Is that product competitive with your liquid bleach? A. We don't feel that powdered bleaches compete with liquid bleaches since the sodium hypochlorite liquid bleaches are more in the heavy duty category, and the powdered bleaches are in the light duty area.

I don't feel that liquid bleaches and powdered bleaches are directly competitive.

Q. In setting your liquid bleach prices, what factors do you consider, sir? A. Well, our prices on Vano Liquid Bleach, have been determined by the cost of the finished product and also the competitive situation.

Samuel Mendleson—Direct

Q. What do you have reference to, sir, when you say "the competitive situation"? A. Vano Liquid Bleach is a very poor seller in the area. It is competing with one very strongly entrenched brand, Clorox. We feel that we could not sell our product since it is not supported by advertising or sales promotion unless it enjoyed a somewhat lower shelf price than its competition.

(Tr. p. 3172)

Q. Will you tell us, do you use any brand name besides Vano in selling liquid bleach? A. No.

Q. Do any of the products of your company, sir, compete with any products of the Procter & Gamble Company?

* * * * *

A. Yes. Vano Liquid Bleach competes with Clorox; Babo Cleaner competes with Comet Cleaner; Glim Liquid Synthetic Detergent competes with Joy.

* * * * *

Q. You have mentioned, sir, that the Vano Bleach is a sodium hypochlorite type bleach. What percent solution is the Vano Liquid Bleach? A. Five and a quarter per cent sodium hypochlorite.

Q. Since you have had control of the company, has the Vano Bleach been manufactured by your company or has bleach concentrate been purchased from others and been cut? A. No. We have manufactured the product from chlorine gas and the alkalizer.

Q. How have you attempted to obtain or to increase shelf space for your Vano Liquid Bleach since you have had it?

(Tr. p. 3173)

A. Our salesmen are instructed to get as much shelf space for our products, including Vano Liquid Bleach, as possible.

Samuel Mendleson—Direct

Q. How do you go about doing that, sir?

* * * * *

A. They attempt to sell the grocer as much of each of our products, including liquid—Vano Liquid Bleach—as possible.

It is our experience that a product will enjoy more shelf space if the grocer has a large quantity on hand.

By Mr. Tincher:

Q. Is there any aid in obtaining shelf space for a given product such as bleach if you can offer the grocer a complete line of related products? A. I think there is, yes.

* * * * *

Q. Does the Vano Liquid Bleach have any unique or special ability or property which aids it? A. No.

Q. Do you know what percent of the Vano Liquid Bleach has been sold in grocery stores as contrasted to drug or

(Tr. p. 3174)

department or variety stores? A. I think practically all of the Vano Liquid Bleach is sold through grocery channels.

Q. Do you belong to or know of any trade association of liquid bleach producers? A. No.

* * * * *

Q. My question is, do your direct salesmen sell your Vano as well as your other products? A. Yes.

* * * * *

(Tr. p. 3175)

* * * * *

Q. Let me ask you, sir, is there any reason why your company uses direct salesmen in selling its products, rather

Samuel Mendleson—Direct

than brokers? A. We prefer and use our own men, salesmen, wherever we can afford to. And we do use our own men in the areas where our sale is sufficiently good to support our own sales organization. In other areas we use brokers.

Q. Why do you have that preference, sir?

* * * * *

A. Well, we think that a company can do a better job in a given area by using their own men. Their own men are giving their full time to the products of the company, whereas, on the other hand, a broker's salesman has many products of many companies to sell. I think it is the—it is agreed that a company that can afford to maintain its own sales organization is in a better position and does so.

Q. Do you pay the freight on your liquid bleach shipments to the customer? A. Yes.

* * * * *

Q. Mr. Mendleson, are the competitive problems, the basic

(Tr. p. 3176)

competitive problems in selling cleaners and soaps and detergents any different from those in selling a liquid bleach? A. Not in my opinion.

* * * * *

(Tr. p. 3181)

* * * * *

Q. In the sales area for Vano Liquid Bleach, in what section of the grocery store is the liquid bleach generally found? A. I think liquid bleach is generally found adjacent to the soap section.

* * * * *

Samuel Mendleson—Direct

(Tr. p. 3185)

Q. Are you familiar with the fact that the Procter & Gamble Company acquired the Clorox Chemical Company approximately in August of last year? A. Yes.

Q. What effect, if any, will this acquisition have on your Vano Liquid Bleach business?

A. Well, from this point on, it isn't going to have any effect, because several months ago we decided to discontinue manufacturing the product.

Q. And why, sir?

A. In the first place, we have had a policy since 19—approximately 1953—not to compete unnecessarily with the soapers.

We acquired the Vano Liquid Bleach in August of 1956, and have not promoted the product or advertised the product since the franchise of Clorox was so strong, so I feel that one of the contributing factors to our decision to discontinue the product was the acquisition of Clorox by Procter & Gamble, since it was obvious that we would not, under these conditions,

(Tr. p. 3186)

entertain any thought of establishing a satisfactory franchise on Vano Liquid Bleach.

(Tr. p. 3191)

Hearing Examiner Haycraft: Maybe I can help cut the Gordian Knot here. You may ask him why they discontinued the manufacture of Vano.

Samuel Mendleson—Direct

Mr. Royall: Your Honor, we object because—

Hearing Examiner Haycraft: I know you are going to object.

Mr. Royall: Because he already asked.

Hearing Examiner Haycraft: And I will overrule the objection and let him answer that question, to see whether I am right or he is right.

Mr. Royall: You are right, I know, in what you said, but the point is, this is the same question asked again.

Hearing Examiner Haycraft: No, it isn't. It is different. According to his theory—according to my theory

(Tr. p. 3192)

it is the same.

Mr. Royall: I am not saying that. I say it is the same question.

Hearing Examiner Haycraft: You answer the question why did you discontinue the manufacture of Vano Liquid Bleach two months ago?

The Witness: Well, it has been our policy since 1953 not to compete with the soapers unnecessarily. In the acquisition of Chemicals, Inc., I think we acquired a liquid bleach. We did not support the product and about two months ago, after giving considerable consideration to the liquid bleach industry, we decided to discontinue the product since, in the hands of Procter & Gamble the Clorox franchise was one that we did not wish to meet head-on.

* * * * *

(Tr. p. 3205)

Q. All right, sir, now let me ask you if the nationally advertised and distributed product—I suppose we better limit ourselves to liquid bleach—has any advantage over a regional, or local, liquid bleach?

* * * * *

Samuel Mendleson—Direct

A. I think advertising-wise, a nationally distributed brand has an advantage over local brands in that advertising can be bought at a cheaper rate per thousand listeners or viewers than on a local basis.

* * * * *

Q. Now let me ask you the same question, sir, with respect to a nationally promoted product, whether—such as liquid bleach—whether it has any advantage over a product being promoted regionally or locally?

* * * * *

(Tr. p. 3206)

A. I think there is an advantage in being able to put on national promotions for a number of reasons. No. 1, you don't have the problem of overlapping territories where one market has the promotion and the next market doesn't have the promotion with the resultant confusion.

No. 2, promotions are usually supported by advertising and if you can buy that advertising to support the promotion on a national basis, you are going to buy it at a cheaper rate.

* * * * *

(Tr. p. 3212)

* * * * *

Q. Mr. Mendleson, is your company still producing the Vano powdered bleach? A. Yes.

* * * * *

(Tr. p. 3215)

* * * * *

By Mr. Tinker:

Q. Mr. Mendleson, the prices in red ink that appear now on Commission's Exhibit 531, have you put those on?

A. Yes.

1097a

Samuel Mendleson—Direct

Q. To reflect the discount schedule? A. Yes.

* * * * *

(Tr. p. 3218)

* * * * *

Room 511-A
United States Court House
Foley Square
New York, New York
June 27, 1958

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

PROCEEDINGS

(Tr. p. 3219)

* * * * *

(Tr. p. 3228)

* * * * *

Mr. Tincher: Miss Reporter, will you please mark as Commission's Exhibit 538A, B and C, a three page, stapled document, a mimeograph copy, a blue copy, dated April 23, 1958 entitled Television Spot Announcements for designated periods, designated stations, designated cities, for Clorox Chemical Company and the Clorox Company.

(The document referred to was marked Commission's Exhibit 538A, B and C for identification.)

Mr. Tincher: Mr. Examiner, at the hearing in San Francisco, we requested Mr. Schaefer to prepare for us an exhibit breaking down an exhibit already of record, dealing with television spot announcements.

Proceedings

Hearing Examiner Haycraft: Do you remember the number of that exhibit?

Mr. Tincher: I realize I should have that; I am sorry, I don't. The exhibit I refer to was received of

(Tr. p. 3229)

of record and then it was ascertained that spots were lumped together and we could not tell whether they were 2 minute spots, 60 second spots, ten seconds, just how long they were. They indicated they would prepare the exhibit, breaking it down.

* * * * *

Hearing Examiner Haycraft: 407A, B, C and D, Television Spots, January 1957-July 1957, and some other dates that I don't know.

* * * * *

Mr. Tincher: Yes, that is it. I offer the document at this time.

* * * * *

(Tr. p. 3230)

* * * * *

(The document, heretofore marked for identification Commission's Exhibit 538A, B and C, was received in evidence.)

* * * * *

(Tr. p. 3231)

* * * * *

Courtroom No. 1, Room 805
United States Post Office and
Courthouse
Cincinnati, Ohio

July 7, 1958

Met, pursuant to adjournment, at 10:00 a.m.

Howard Joseph Morgens—Direct

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *
(Tr. p. 3232)

PROCEEDINGS

* * * * *
Howard Joseph Morgens

was thereupon recalled as a witness, having been previously duly sworn, testified as follows:

DIRECT EXAMINATION

* * * * *
(Tr. p. 3236)

By Mr. Tinch:

* * * * *
(Tr. p. 3248)

* * * * *

Q. Now, Mr. Morgens, when you were here before you discussed the contracts The Procter & Gamble Company has with automatic washing machine manufacturers and automatic dishwashing machine manufacturers. I have just one question concerning those, and that is this: Is it not a fact in '56 and '57 The Procter &

(Tr. p. 3249)

Gamble Company spent many millions of dollars acquiring and carrying out its contractual obligations under those contracts?

* * * * *

A. If I must answer that question with a yes or no answer, the answer is no.

Howard Joseph Morgens—Direct

Hearing Examiner Haycraft: You may explain your answer.

The Witness: From the time standpoint, Tide time period standpoint—

* * * * *

The Witness: —we spent money advertising Tide, which from Tide's own desires wanted to feature the name of a washing machine manufacturer, washing machine manufacturing company as recommending Tide. So it did that because a competitor—

* * * * *

(Tr. p. 3250)

* * * * *

Mr. Tincher: Mr. Examiner, I'd like an explanation, but this is a defense against something that may be new to this. We're not charging anything wrong with this. We just want to know if it isn't a fact that millions of dollars were spent in the process of doing it. Now, whether that is the subject of another case or not, and the respondent has a defense to it, we're not interested in.

Hearing Examiner Haycraft: That may be true. This witness is not an ordinary witness. He is the top official of the respondent. And while I recognize that probably many of these questions should await—the testimony should await direct examination of counsel for the respondent in defense matters, I'm going to be a little more liberal probably than usual in allowing him to make explanations as we go along.

However, I can see that he was going into now what would be a defense, and I will admonish the witness to try to answer this question as near as he can as to whether or not Procter & Gamble spent, we'll say more than a million dollars, or whatever generally speaking between a million

Howard Joseph Morgens—Direct

and a million and a half dollars, or what-not, to popularize or to advertise Tide or any other powdered soap or detergent used in washing machines and dishwashing machines.

The Witness: In answer to your question, yes, we did.

* * * * *

(Tr. p. 3251)

* * * * *

By Mr. Tincher:

Q. And the answer, Mr. Morgens, would be quite a few millions of dollars rather than just a million or a million and a half, wouldn't it?

* * * * *

A. I'd have to say quite a few million dollars to do what, Mr. Tincher?

By Mr. Tincher:

Q. To obtain contracts and to carry out your contractual obligations under the contracts. By that I mean the advertising that is involved, free samples to be supplied to the various manufacturers, the follow-up program involved, money spent to supervise it, and all those things.

* * * * *

A. Money in the size that you have mentioned, or anywhere near that size was not spent only to acquire those contracts.

* * * * *

(Tr. p. 3252)

Q. Not to acquire them, no. To acquire them, and then to carry out your obligations under the contracts.

* * * * *

A. They were not spent only to acquire the contracts or

Howard Joseph Morgens—Direct

to carry them out. Those were not the reasons for those expenditures.

* * * * *

Q. Well, whatever the reason was, the amounts is all I'm interested in, the amounts. A. We have spent—

* * * * *

A. —those amounts of money in support of Tide for a washing machine advertising story.

By Mr. Tincher:

Q. Right. My only question—

Mr. Royall: Wait a minute. Let him answer.

Q. Excuse me. Go ahead. A. We spent those amounts of money, in other words to support Tide.

Q. All right. Now, I just have— A. As a distinction between your question and my answer.

Q. Yes. I have just one question. My question is, rather than the million or a million and a half that the Examiner suggested, it should have been several times that amount, shouldn't it?

(Tr. p. 3253)

* * * * *

A. I don't honestly recall an exact figure. And when you say several times, that amount is a little vague. I think I had better say I don't know.

By Mr. Tincher:

Q. I'd suggest, then, in 1957 between four and five million dollars for the advertising of Tide and Dash under these contracts.

* * * * *

A. If you can—If your question means did we spend that amount of money for advertising Tide and Dash, the answer is yes.

* * * * *

Howard Joseph Morgens—Direct

(Tr. p. 3254)

* * * * *

Q. My question is that instead of the million or a million and a half that the Examiner suggested was expended by Procter & Gamble, under the contracts, to advertise Tide and Dash in conjunction with automatic washing machines, should not the figures be closer to four or five million dollars in 1957? A. I don't know.

* * * * *

(Tr. p. 3262)

* * * * *

By Mr. Tincher:

Q. Well, while we're talking about that, Mr. Morgens, isn't it a fact that your company is under legal advice from counsel not to include Clorox in advertising promotions, or coupons or anything else while this case is pending? A. No, it is not, to my knowledge.

Q. Not to your knowledge. Whose knowledge would it be to? A. Well, it would be to my knowledge.

Mr. Royall: Do you want any testimony from counsel on that?

Mr. Tincher: We may just want some in view of that answer.

Mr. Royall: I'll be glad to answer. We haven't advised them not to do anything.

The Witness: We'd be glad to expand on that answer, too.

* * * * *

(Tr. p. 3266)

* * * * *

By Mr. Tincher:

Q. Now, Mr. Morgens, are the November, 1957 prices of Clorox, which included a price increase on two sizes, half

Howard Joseph Morgens—Direct

gallons and gallons, are those prices still in effect all over the country,

(Tr. p. 3267-A)

or have there been some changes in those prices?

* * * * *

A. There have been no further changes.

By Mr. Tincher:

Q. Well, with reference specifically to the quart size, has the Clorox quart been sold to retailers at \$1.91 for a case or \$2.01 for a case? A. I don't know the exact price, Mr. Tincher, but there have been no changes in the broad pricing of Clorox to the trade.

Q. Since the November—— A. Since the November changes.

There may have been one or two small cities where there has been some price adjustment in connection with selling a special bottle on a test basis. There has been no major change in Clorox pricing. There are experimental endeavors going on under our policy in a lot of places in the country. If you are aware of a price change, that would be the policy it falls under.

* * * * *

(Tr. p. 3281-A)

* * * * *

Q. Mr. Morgens, do you recall when you were testifying making the statement that Clorox has a higher share of the market than any P&G product has ever had, once again Clorox had a larger

(Tr. p. 3281-B)

share than Tide and Cheer combined? A. I recall making a statement to the effect that Clorox has a larger share

Howard Joseph Morgens—Direct

of market than any P&G product, and that it has a larger share of market than Tide and Cheer combined. I don't recall making the statement that it has a larger share than any P&G product ever had, because we have been first in some fields with a product and I suppose for a very short time we may have even had a hundred percent of the market when we will first bring out some type of new product, and our history is a long time.

I hope I didn't say any time in our history.

Q. All right, sir. What period of time did you have in mind? Did you mean currently? A. I mean currently, yes.

* * * * *

(Tr. p. 3287)

* * * * *

Mr. Tinch: And, then, also, in connection with testimony at record 828, we would like the books and records and documents of the company, in this case of The Clorox Company, which show that the money spent in the Erie, Pennsylvania promotional situation came out of money which would have been used in other media of advertising.

* * * * *

(Tr. p. 3288)

* * * * *

Hearing Examiner Haycraft: Well, as I understand that testimony, in other words you had a certain amount of money to spend for advertising, and he's spending it that way in that area at that time.

Now, how in the world he can amplify on that would simply be the amount of money that was spent there and from what fund it was taken.

Can you show that?

The Witness: I perhaps can help in this.

Howard Joseph Morgens—Direct

(Tr. p. 3289)

A. The Clorox advertising funds are appropriated based upon a set amount per case of Clorox sold, and that is appropriated in the beginning of the year. There is no increase in appropriation incurred in a year because of what you do in Erie or any other city. It has to come out of those funds; those funds would be spent in some other manner if they weren't spent in that way, in Erie, or wherever the other town was you mentioned.

We can demonstrate that in some way—I don't know, but that is a fact.

* * * * *

(Tr. p. 3291)

* * * * *

The Witness: I think the only way we could sustain that statement, which is correct, is to show that there was no additional money appropriated for Clorox advertising and promotion activities during the period in question.

Mr. Royall: As I understand it, your Honor, in the testimony given before and the testimony that's been given here, they don't have to go and get their money out of any particular pocket. They just have so much money to spend; and if they spend it on this, they don't have it to spend somewhere else. It doesn't have to be identified where it came from.

Hearing Examiner Haycraft: I think that's probably true; but we had better have the man who has control of that testify to those facts.

Mr. Royall: I suppose that would be someone from Clorox?

The Witness: That's in my control, the amount of money that is spent; and the way that's arrived at is in my control as president of the Clorox Company and as presi-

Howard Joseph Morgens—Direct

dent of Procter & Gamble Company; and I don't know any-one better qualified to testify than me on how much money I know was spent.

(Tr. p. 3292)

Hearing Examiner Haycraft: In other words, it would be possible to do this then: Had you been selling in Evansville and Erie prior to the time you put on this?

The Witness: Oh, yes.

Hearing Examiner Haycraft: Now, do you know how much money was spent there normally?

The Witness: No, I don't; and I am not saying that we didn't spend more money in Erie than we spent previously in Erie, as I say, a test operation or to meet a specific situation. I am saying that the additional money that we spent in Erie—if it was additional money—came out of some place else because there was no additional advertising and promotion funds appropriated for the Clorox brand.

Hearing Examiner Haycraft: But you are in no position to say where it came from?

The Witness: Well, it could have come from little bits and pieces all over, I don't know. If there is no more money to be spent and if that's the amount that is going to be spent anyway, then you know it must have come from some place.

* * * * *

(Tr. p. 3293)

* * * * *

By Mr. Tincher:

* * * * *

Q. In establishing that budget, it is not just, so much a case but that estimate is broken down to what will go to what media, is that right? A. No. That budget is

Howard Joseph Morgens—Direct

appropriated in, you might say, a lump sum. The money is appropriated in that way, and then we agree—Mr. Fred Brown, the head of Clorox Company, and myself—

(Tr. p. 3294)

agree on the policies under which that is to be spent. Those policies, as I said, are to follow the same pattern of the old Clorox company, apart from experimental endeavors in particular towns.

Q. When you and Mr. Brown first got together and you decided how much money was going to be available, you had to make some effort to break that down into what media would be utilized, did you not? A. We took a look at what the Clorox Company spent per case, and we took that same per-case figure and estimated shipments that we would make of Clorox in this period which the budget covered; and that's how you got at the total.

Q. Right.

Now, we have got our total. A. Yes.

You get the total and then somebody, Mr. Brown and his advertising manager, breaks that down as to how much for magazines, how much for newspapers, how much for radio, how much for television, how much for plans such as the one used in Erie, and so on; but he cannot exceed that total amount of money.

Q. And it is all broken down by categories, it would have to be before he starts spending the money? A. That breakdown can change. It is within his prerogative so long as he lives within a policy for spending it; but obviously when you add something in Erie and it's within a fixed total, it must come from some place else because it's

(Tr. p. 3295)

within that fixed amount of money. That's the meaning of my previous testimony on this subject.

Howard Joseph Morgens—Direct

Now, there is no records we have that would say that the money we spent in Erie, Pennsylvania—We did not spend any more money because of what we did in Erie.

* * * * *

(Tr. p. 3313)

* * * * *

Q. Do you have some documents, sir, in documentary form concerning the price on quart bottles of Clorox?

A. I don't have any documents on the prices, no.

Hearing Examiner Haycraft: Can you answer the question you were asked this morning?

The Witness: I can.

The question this morning was, had we made any changes in the Clorox prices since last November?

Q. That's right. A. We have made changes only in two points, Atlanta and Buffalo, and in those points we have increased the price of the Clorox quart bottles simultaneously with the introduction of a special quart bottle with a handle.

We have on July 1 discontinued the price increase; or in other words, we have reduced it again to its original price in Atlanta. A ten-cent higher price per case on the quart bottle still stands in Buffalo.

Q. And that ten cents, sir, would make the price \$2.01 rather than \$1.91, or do you know that?

(Tr. p. 3314)

A. I do not know that, no.

Mr. Royall: We will stipulate it does.

* * * * *

(Tr. p. 3318)

* * * * *

Mr. Royall: Mr. Tincher, Mr. Morgens was asked about

Howard Joseph Morgens—Direct

the statements on Exhibit 331, to the effect that approximately

(Tr. p. 3319)

two-thirds of the total business of the company was represented by soaps, detergents, cleansers.

Hearing Examiner Haycraft: And drugs.

Mr. Royall: And their by-products; and by the sales of drug products. Your question was directed as to how much the percentage would be as to soaps, detergents and cleansers.

Hearing Examiner Haycraft: That's right.

Mr. Royall: We have written a notation, consisting of the second and third lines of our copy of Exhibit 331, indicating that percentage. The exact figures are available for your inspection at the Company office, so that you could recompute the percentage if you desire to do so.

If this percentage is to be put in evidence, your Honor, these two lines, we would like it done in camera.

* * * * *

(Tr. p. 3320)

* * * * *

Hearing Examiner Haycraft: Let him mark that, and I will receive it, and you can borrow it. Let the record show this exhibit refers to Commission's Exhibit 331.

(The paper referred to was marked Commission's Exhibit No. 540, and received in evidence, IN CAMERA.)

* * * * *

(Tr. p. 3330)

* * * * *

Hearing Examiner Haycraft: Do you remember, Mr. Morgens, what it was?

Howard Joseph Morgens—Direct

The Witness: It was on the question of whether or not the Clorox Company increased its expenditures as a result of what it did in Erie, or whether that expenditure came out of other media or other forms of expenditures.

Hearing Examiner Haycraft: Oh, I recall it.
What have you found out about it?

* * * * *

(Tr. p. 3331)

* * * * *

The Witness: There was one appropriation made by the Clorox Company after its acquisition by Procter & Gamble for advertising and promotion expenditures. That appropriation, which if we don't have it here we can get, may have to come from San Francisco and amounted to \$3,800,000 for the eleven-month period, August 1 through June 30. That's the fiscal year except for the month of July, which was before the acquisition. There have been no additional advertising or promotion appropriations. We phoned San Francisco and talked to the comptroller. He told us on the phone that that appropriation would be underspent by approximately \$50,000. He is confirming that and will wire the confirmation.

We cannot find today the exact figure because the books of the Company are not yet closed. They have a fiscal year ending June 30; they will be closed shortly, and we will file or we will submit the necessary papers to show what that expenditure was.

The purpose of this testimony is to show that a given amount of money is appropriated for a brand, and how the management of the Company uses that advertising and promotion appropriation is within its authority under the policies under which it operates, but that it doesn't just add additional money to the funds behind the brand when

Howard Joseph Morgens—Direct

it runs something like a cents off offer, which was the offer mentioned in connection with Erie.

(Tr. p. 3332)

I think that was the whole point of the testimony, whether or not that represented extra funds or not.

Mr. Tincher:

(Tr. p. 3334)

Q. Let me ask you another question along these lines, Mr. Morgens. The advertising allowance is based on so much a case, is that right? A. Cases sold. The appropriation is usually established on the basis of a certain expenditure per case, or per unit, yes.

Hearing Examiner Haycraft: What basis, what time?

You couldn't anticipate how many units you would sell during the year? A. You make a—yes, you do. That's part of setting the appropriation. You estimate what you are going to ship and you establish the amount of money you are going to expend based on an estimate of what you are going to ship. That's the way you arrive at that total figure.

(Tr. p. 3337)

By Mr. Tincher:

Q. Mr. Morgens, I show you Commission's Exhibit 403, which is in camera, which is entitled Advertising Promotional Expenditures for The Clorox Company for the Period August 1 through December 7, 1957, which would be five months for which the operation covered. Is that correct?

Howard Joseph Morgens—Direct

A. Four months and seven days, if I understood you correctly.

By Mr. Tinch:

Q. Oh, four months. A. Yes

Q. And the appropriation was supposed to be for 3.8 million dollars.

(Tr. p. 3338)

A. That was the only amount appropriated.

Q. What was the exact date of that period, sir, that that money was to be spent? A. August 1 through June 30.

* * * * *

Q. Does that amount, sir, include the six cents per case allowance plan? A. I'm quite certain not. I'd like to say I'm certain, but I'm not certain about that accounting out there as I am about it here. It would not within The Procter & Gamble Company, and I'm quite certain it wouldn't on The Clorox Company.

Q. Advertising and promotion. A. Advertising and promotion.

* * * * *

(Tr. p. 3339)

* * * * *

Q. Now, is there within the budget that's allocated, sir, an emergency fund in case Purex, or someone like that would come along and have a big promotion in the locality? A. That would be very unusual if it was there.

I feel quite certain there is always a one percent or two percent contingency, because sometimes rates change, and, of course, there is usually a contingency fund.

You see, it's the prime responsibility of the manager of that company not to overspend his budget.

Howard Joseph Morgens—Direct

Q. All right. Excuse me—go ahead. A. I don't know what the final figures, when the books are closed, will show, but I would say if they overspent the budget they're not the people I think they should be.

Q. Now, after the appropriation is established at the beginning of the fiscal year that is involved, when is there a re-appraisal made, or is there a re-appraisal made to see if the case sales are following the expected pattern?

A. That's constantly being made.

(Tr. p. 3340)

Q. So that— A. Now, if the sales do not come up to the estimated volume that was made at the beginning of the year, your advertising and promotion expenditures are cut back so that the amount per case stays in line. An only exception to that will be if there's a sudden falling off in the last quarter of the year of sales and commitments were then already made and could not be cut back, in which case that is formally reported, and they get authority to overspend the case rate because there is no alternative.

Q. All right, sir, and the converse of that would be true, also, would it not, if at the end of the first quarter or the first half the case sales were much higher than anticipated, there would be more money available for advertising and promotion, would there not? A. There would be a receptiveness on the part of the company to receive a recommendation for additional appropriation, providing there was clear case made that that money could be well spent on the brand.

(Tr. p. 3352)

Howard Joseph Morgens—Direct

Q. Now, Mr. Morgens, have there been any new production locations for the Clorox bleach since our February meeting, excluding the Kansas City situation?

(Tr. p. 3353)

A. The Kansas City situation, and the Boston situation, which you may be familiar with.

Q. Yes. Excluding both of those, Sir. A. No.

Q. And the production has resumed with Boston now.

A. The production has resumed with Boston, and Kansas City.

(Tr. p. 3363)

Courtroom No. 1, Room 805
United States Post Office and
Courthouse
Cincinnati, Ohio
July 8, 1958

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

(Tr. p. 3364)

PROCEEDINGS

(Tr. p. 3365)

Howard Joseph Morgens

resumed the stand and testified further as follows:

Howard Joseph Morgens—Direct

(Tr. p. 3369)

* * * * *

The Witness: I was asked to tell the story about whether the ironing board cover was in fact a self-liquidating premium as I think I had previously testified in January.

By Mr. Tincher:

Q. Yes, sir. A. The story is as follows: The ironing board cover premium was run in November, 1957, in the Southeastern United States, between January 20 and February 14 in Erie, Pennsylvania, and in June, 1958, in the southwestern sales division. In each case the ironing board cover cost $38\frac{1}{2}$ cents; postage was 5 cents, the handling charge was $6\frac{1}{2}$ cents in 1958 and $5\frac{1}{2}$ cents in November—in the November, 1957, offer. The total

(Tr. p. 3370-A)

cost to Clorox therefor was 49 cents for the 1957 offer and 50 cents for the 1958 offer. In each case the charge to the consumer for the premiums was 50 cents. In each case the ironing board covers were bought for the specific premium offer and were purchased specifically for the Clorox premium offers. There was no special quantity discount by reason of any Procter & Gamble connection or previous Procter & Gamble use of this premium.

Then I have a further story on what is called a dampening bag which was run as a self-liquidating premium promotion in March, 1958. I don't know whether you want that information or not. I have it here if you do.

Q. No, I'm not interested in it.

* * * * *

(Tr. p. 3370-B)

* * * * *

Howard Joseph Morgens—Direct

Q. Now, you mentioned the total price of 49 cents and another price. Was that the total cost charged The Clorox Company by Procter & Gamble? Just where did that figure enter in? A. The handling cost was done by The Procter & Gamble advertising departments, the handling of the offer. The mailing was done by The Procter & Gamble advertising department's merchandising division, and Clorox was charged by them for that handling cost.

* * * * *

(Tr. p. 3371)

Hearing Examiner Haycraft: Now, without any such evidence along that line it's going to be assumed that all of this will be taken into consideration as to what they actually paid. There will be no finding as to whether or not it's the same as outside.

By Mr. Tinch:

Q. Now, sir, you've explained the charge for the mailing. Now, what would be the charge for the actual work of the redemption of the premiums? A. The charge of six and one-half cents was the handling charge, and that covered every aspect of the handling. I said the postage was five cents, in addition to six and one-half cents for the handling.

Q. Then, the handling would include redemptions. A. The handling would include all of the redemptions, yes. The filling of the requests when people sent in their money; they were mailed back the ironing board cover.

* * * * *

(Tr. p. 3372)

* * * * *

Mr. Royall: Mr. Morgens, you were asked at Page 3248 about certain distributor changes of Clorox before and

Howard Joseph Morgens—Direct

after the merger, or maybe after the merger—before and after the merger.

Have you information as to the changes and when they were made and the personnel involved, and who the personnel involved was?

The Witness: Yes, I have.

Mr. Royall: If you wish to examine him about that information.

By Mr. Tinchler:

Q. Yes. A. You asked about—4—

Hearing Examiner Haycraft: Kansas city, to start with.

A. (Continued) About three different distributors who have ceased to work for Clorox. One was in Kansas City, and in October, 1956 the Clorox Chemical Co., that was the old Clorox Chemical Co., replaced McManus Huryer in Kansas City, and that distributor also covered Wichita and Oklahoma City. That firm

(Tr. p. 3373)

was replaced by another distributor called H. J. Zorning for Oklahoma City, Kersting Greer for Kansas City, and Whitney-Niles-Allen for Wichita. That was in October, 1956.

Another distributor that you requested information about was in Milwaukee, Wisconsin. In August, 1957 Wetzler, Voss was appointed Clorox distributor replacing Wilkenson Deskey Randall. This change had been initiated by the Clorox Chemical Co. and was completed after the acquisition in August, 1957.

The third distributor that you asked—

Q. Go ahead, sir. A. The third distributor about which you requested information was in Cedar Rapids,

Howard Joseph Morgens—Direct

Iowa. In March, 1957 Berg Brokerage of Davenport replaced Carton Jeffery in Cedar Rapids.

That's the whole story.

Hearing Examiner Haycraft: Do I understand from what you have said, there have been no changes in distributorships since Procter & Gamble took over control?

The Witness: The only change was in Milwaukee, and that change was initiated by the old Clorox Chemical Co., but completed—

Hearing Examiner Haycraft: That's what I understood. There have been none initiated, then, by The Procter & Gamble Company. Is that right?

The Witness: Yes.

* * * * *

(Tr. p. 3377)

* * * * *

By Mr. Tincher:

Q. My question is, sir, the same question I asked yesterday, if various prices off have been offered in these cities. That was the extent of my question.

Hearing Examiner Haycraft: What cities?

Mr. Tincher: Detroit, Nashville, Chattanooga, Atlanta and San Francisco, and subsequently we asked if any

(Tr. p. 3378)

other promotions were used.

Hearing Examiner Haycraft: What product?

Mr. Tincher: Clorox, sir.

Hearing Examiner Haycraft: All right.

Mr. Royall: Your Honor, the question finally was anywhere.

Hearing Examiner Haycraft: Yes.

* * * * *

Howard Joseph Morgens—Direct

A. I understood the question a little differently, your Honor. I thought the cities you mentioned were already in the record, and you wanted to know whether there were any other cities, any cities other than that, other than those which were already in the record where we had run some——

Hearing Examiner Haycraft: That was my understanding of it, too, but go ahead.

* * * * *

(Tr. p. 3379)

* * * * *

A. (Continued) The Clorox promotions which were run since February, 1958 and which are not included in the evidence are as follows:

Price off label promotions, there was a five cents off on gallons used in the distributor territory covering Metropolitan Chicago and the areas immediately around Chicago, that's northern Illinois and part of Wisconsin.

There was——

By Mr. Tinch:

Q. Before you leave, sir, can you give us the approximate date on each of these, or do you have that? A. I don't have that information. It's been since February, 1958.

Q. All right, sir. A. There was a premium pack of a dish cloth attached to the Clorox bottle in Los Angeles.

There was a self-liquidating premium offer, ironing board cover offered in ten distributor territories in the southwestern United States.

(Tr. p. 3380)

Q. Southwestern. That would include Texas, Oklahoma.

A. Yes, sir.

Howard Joseph Morgens—Direct

Q. Maybe Arizona, and New Mexico? A. Possibly, Mr. Tincher.

Mr. Royall: Is that all you care to ask on that subject?

By Mr. Tincher:

Q. Does that complete your answer, sir? A. Yes, sir.

Q. Now, apparently there has been some misunderstanding, sir. We still would like to know about Detroit, Nashville, Chattanooga, Atlanta and San Francisco price off labels on all three sizes with the exception of Detroit where our question is the five cents off on half gallons. As a matter of fact, sir, we will withdraw that question because we put in such label when we were in Detroit, it was stipulated in, so we will withdraw the City of Detroit.

* * * * *

(Tr. p. 3381)

Mr. Royall: We offer to stipulate as to the towns mentioned except Atlanta, as to which we have no information here. We would be glad to send to counsel for the complaint for the purposes of a stipulation any information we find about Atlanta up to this present time, if we find any. And that might be entered in the record, if they wish it be done.

Mr. Tincher: And I assume we can stipulate that in these various cities, with the exception of Atlanta, that there was a two-, four- and six-cent off label, or something comparable to that?

Mr. Royall: I think so.

* * * * *

(Tr. p. 3388)

* * * * *

Howard Joseph Morgens—Direct

Mr. Tincher: Do you want me to read this in the record?

Hearing Examiner Haycraft: Yes, read it to Mr. Morgens and see if he can confirm it.

By Mr. Tincher:

Q. Starting at Record 1462, line 9: "Now, Mr. Shaver, what has been the savings reported to The Glorox Company on radio advertising by virtue of discounts and Procter & Gamble product grouping?"

And Mr. Royall has a statement concerning that they were computations which had been made after Mr. Morgens' examination, Mr. Morgens didn't have full information, et cetera; he says he didn't know whether Mr. Shaver knows anything about it; if he did, we would refer to give supporting data.

And the Examiner says, "He wants to find out if he made any."

"Mr. Royall: I don't think he has . . ."

"The Witness: May I answer the question?"

The Examiner says, yes, you may. The objection is overruled.

The Witness says, no.

"Q. You haven't made any? "A. We have not made any.

(Tr. p. 3389)

"Q. What has been reported to you by The Procter & Gamble Company?

Objection.

Overruled.

Further objection.

"Examiner: What have they reported to you, Mr. Shaver?

Howard Joseph Morgens—Direct

"The Witness: A saving of about \$500 in radio, around \$50,000 in magazines, \$86,000 in television."

Then Mr. Tincher: "Q. You have had a saving in radio even though you are doing much less radio advertising than you were prior to the acquisition?"

"Examiner: \$500 he said."

Hearing Examiner Haycraft: All right, let the witness answer.

Mr. Tincher: And in an earlier place—that took care of three of them. In an earlier place——

Hearing Examiner Haycraft: I remember the \$50,000.

Mr. Tincher: In an earlier place there was a statement of the witness about \$2,000 saving in newspapers on expenditure of \$1.4 million.

Hearing Examiner Haycraft: Now, the point is, as I understand it, you want Mr. Morgens to look and see if he can find where he made such a report to Mr. Shaver, and what it was based on.

(Tr. p. 3390)

The Witness: Could I attempt to clear this up off the record?"

Mr. Royall: No, put it on the record, if you can.

Mr. Tincher: Yes.

By Mr. Tincher:

Q. Of course, the \$64,000.00 question is whether these figures I read you, were they actual or were they some kind of theoretical figures? A. Mr. Tincher, the only way that I know of that you can answer your question is by means of a computation. You can see the books, you can see any other figures that you wish to get, and I don't believe you or any qualified expert can answer the ques-

Howard Joseph Morgens—Direct

tion except by means of a computation. And the word computation is in the testimony which you read. It's a calculation.

I am sure we can show you that calculation and let you go through it and talk to the people who made it, and I would think that you would be very much satisfied that that was the best way known to man to answer your question; by means of a calculation I mean this:

One would have to take the plans as of a given date for the fiscal year period as to what was being spent in television on specific buys, specific times of the day on specific days, and then would—then one would have to calculate, if I were attempting to answer this question, one would have to

(Tr. p. 3391)

calculate what those specific purchases would have cost The Clorox Company if it were on its own, and that, of course, would be done by following the card rate calculation for each specific station across the country on all of these specific spots that are purchased.

Then one would make another calculation alongside of that saying those spots cost Procter & Gamble, Clorox is part of that, and making a comparison, and you would arrive at the difference of \$86,000.

My understanding is that calculation was made and was made painstakingly, and that's where the \$86,000 figure came from.

But you could subpoena the books and records, and I don't think you could get any kind of answer to your question.

Q. Well, it would be very simple, would it not, to know where Clorox advertised, what station, what newspaper?

A. The advertising lists of spots they are buying, they're

Howard Joseph Morgens—Direct

changing, there are no constants. You will find a given list of spots one month, and you will find a different list of spots another month. There are degrees of change, of course. But there is no constant between one fiscal year and another. The station changes its format and doesn't make a spot available any more for national advertisers. You have to find another one. A competing program comes in opposite that spot with a very high rating, so you move it. You change.

(Tr. p. 3392)

It ceases to be available as a one minute, and becomes a twenty second.

And there is a constant kaleidoscope, of changes in that picture. The only way that we knew how to get an honest answer to your question, or the best answer we could think of was to make—here's the plan as of this moment, this is what it cost The Clorox Company to buy it, if it were buying itself, and this is on the rate cards. Anyone can do this. And here is whatever cost Procter & Gamble paid. You apply the standard published rate cards for each station, for each time of day, for each spot.

Q. Right, sir.

Mr. Royall: Mr. Tincher, may I ask you a question? I'm merely suggesting to you that which would save cross-examination on my part and give the whole picture.

I don't think you have clearly brought out whether these figures were for the fiscal year which had not yet ended at the time they gave, and they had to be based on estimates. I think if you ask him for that period he's covering, I think it appears in the evidence, but I'm not sure, it would complete the story.

* * * * *

Howard Joseph Morgens—Direct

(Tr. p. 3393)

* * * * *

By Mr. Tincher:

Q. All right, sir, these estimates of savings listed, for example the \$86,000 on television; is that assuming an equal amount spent by The Clorox Company as would have been spent by the Clorox Chemical Co.? Just how is that computed? Is that—That is \$86,000 savings on what?

A. That is assuming what The Clorox Company planned to spend after Procter & Gamble acquired it. Actually we spent more than the old Clorox Chemical Co. on television spots, a small amount more but it was probably on a larger amount.

Q. That's what I want to know. You spent a small amount more than the old company did. A. No, we spent a larger amount on television spots.

Q. Yes, a larger amount, but only a smaller—not an extremely larger—I see the problem.

You say it's a larger amount, but the increase is small. Is that correct? A. Well, I would interpret it as small. I could give you the figures here.

Q. How small, sir?

* * * * *

(Tr. p. 3394)

* * * * *

The Witness: As a matter of fact, I don't have the figures. I have them on the basis of an 11-month period, but then the calculation wouldn't make any sense at all. They would have to be based on a 12-month period.

By Mr. Tincher:

Q. Can you give a percentage, sir? Would it be 10%, or 5%? A. I would give you the figures I have, and you can help me draw any conclusions you wish from it.

Howard Joseph Morgens—Direct

The old Clorox Chemical Co. spent in 1956-'57 fiscal year, twelve months, \$1,150,000 on television spots; The Clorox Company spent in August through June, 1957-58, that's eleven months, so you would have to make an extension here \$1,386,000. Now, I understand that the Clorox Chemical Co. had built up in the course of '56-'57 its television expenditures so that its rate at the end of the fiscal year was higher than its rate at the beginning of the fiscal year. And what we have done is by and large extended the rate of television spending at the end of the year.

Now, the calculation that I am talking about was based on what The Clorox Company was doing after August 1, and what it—what that—what those television spots would cost The Clorox Company if they were continued for a 12-month period.

(Tr. p. 3395)

which they are never done because there are always variations in a picture like that. But it's making that projection, it's assuming everyone is continuing for twelve months, what would that cost The Clorox Company?

And then there was another calculation based on the same assumption, assuming those particular spots would continue for twelve months what would they have cost The Clorox Company if it had been operating as an independent company, not related to Procter & Gamble.

I don't—

Q. Did you make the same 12-month projections for The Procter & Gamble advertising that was involved?

A. I'm not sure I understand your question.

Hearing Examiner Haycraft: The same 12-month period. A. (Continued) Yes, the identical period, identical spots.

Howard Joseph Morgens—Direct

By Mr. Tincher

* * * * *

(Tr. p. 3397)

* * * * *

Q. All right, sir. Now, let's turn to newspaper, and let me ask you the same question there. If The Clorox Company has spent more money on newspaper than the Clorox Chemical Co.? A. The answer to that is no.

Q. There has been less money spent? A. Well, there has not been a full twelve months go by either.

Q. That's what I'm assuming. Break it down on a monthly average. A. It's been fairly close, Mr. Tincher. The exact figures on newspapers—

Mr. Royall: Your Honor, we object to this. They're trying to compare eleven months with twelve months, and I think—

Hearing Examiner Haycraft: I think it can be done by projection on an average basis.

(Tr. p. 3398)

* * * * *

A. (Continued) Newspaper expenditures in '56-'57, as I have them here—these are pencilled figures—\$1,750,000, 1956-57 fiscal year; \$1,400,000 in the 11-months, August through June of the '57-'58 fiscal year.

Mr. Tincher: Could I have that answer, sir? I got confused. I'm very sorry.

(Answer read.)

By Mr. Tincher:

Q. So for the newspapers there were approximately \$300,000 less spent in the 11-month period than the preceding 12-month period by the Clorox Chemical Co. Is that correct? A. The figures would show.

Howard Joseph Morgens—Direct

(Tr. p. 3399)

Q. Now, within that 11-month period were there any definite policy changes in the amount of newspaper advertising that would be used during any given period within that 11-month period? A. No, sir, there would not.

Q. All right, sir. A. That might—That again would be a continuation of taking an average of your expenditures. As I say, the old Clorox Chemical Co. in the course of '56-'57 was building up its television; so at the end of the year it had a higher rate than when it started, and they must have been lowering something while they were doing that.

Q. There have been no policy changes at all. A. No.

(Tr. p. 3400)

Q. Mr. Morgens, is it correct that on the \$1.4 million newspaper expenditure of Clorox advertising in the eleven months subsequent to the acquisition, that it was only possible to save \$2,000.00 above and beyond what the Clorox Chemical Co. did of about \$1.4 million newspaper advertising before? A. That's my understanding of the testimony, and I certainly have no reason to doubt it.

Q. Now, was that \$2,000 all in one newspaper, sir, or was that divided among 600? A. I don't know.

Q. Now, the same question, sir, with respect to radio, as to whether the expenditures for radio pro-rated monthly, or however you want to do it, subsequent to the acquisition, or more or less than the comparable period prior to the acquisition?

Mr. Royall: I object to the pro-rating monthly.
Hearing Examiner Haycraft: Overruled.

Howard Joseph Morgens—Direct

By Mr. Tincher:

Q. Or just give it the way it had been, sir.

Mr. Tincher: We are attempting to meet the objection.

Mr. Royall: Well, sir, he's already testified this was an estimate for the month of June at least.

A. My counsel is unhappy, but I'll—

(Tr. p. 3401)

Hearing Examiner Haycraft: Go ahead.

A. (Continued) The 1956-57 figures I have show that \$114,000 was spent in radio—I'll give them the way I have them here; in the 10-month period of '57-'58, that's August through May, it's an actual figure, Clorox, I believe spent \$105,000,000; estimated for June is \$10,000,000—\$105,000, and estimated for June is \$10,300.

By Mr. Tincher:

Q. All right, sir, thank you.

Well, finally, sir, to make the record complete, the same question with respect to magazine advertising. A. 1956-57, \$485,000 magazine advertising; 10 months, August through May, '58, \$302,000; estimated in June, \$52,000.

Those are the figures.

Q. All right, sir. Now, one final question concerning all media of advertising. Is it my understanding that subsequent to the acquisition the planning, the placing of Clorox advertising has been handled by The Clorox Company advertising officials and their advertising agency Honig-Cooper on the west coast? A. That's correct.

* * * * *

(Tr. p. 3402)

Hearing Examiner Haycraft: As I understand your testimony, you said you sat in on the budget yourself.

1131a

Howard Joseph Morgens—Cross

The Witness: I sit in on the total amount of money, a broad policy decision.

Hearing Examiner Haycraft: Whether it would be more or less.

The Witness: I say how much money, and the general philosophy we want to follow.

Hearing Examiner Haycraft: Yes.

The Witness: In spending that money.

Hearing Examiner Haycraft: But they work it out in details.

The Witness: They work it out in details.

* * * * *

(Tr. p. 3407)

* * * * *

CROSS-EXAMINATION

By Mr. Royall:

Q. Mr. Morgens, yesterday Counsel for the Complaint was making certain inquiries about Exhibit 403 relating to advertising promotional expenditures of The Clorox Company from August 1st, 1957 through December 31st, 1957. I hand you this Exhibit 403, and ask you whether the item six cent case allowance, \$613,403 is included in the advertising and promotional expenses of \$33,800,000—

A. \$3,800,000.

Q. \$3,800,000 about which you testified? A. It is not.

Q. It is not. A. No.

* * * * *

(Tr. p. 3408)

* * * * *

Q. That's right, sir. All right, sir.

Howard Joseph Morgens—Cross

This \$3,800,000 figure about which you were asked yesterday was for eleven months, was it not, sir? A. Yes, sir.

(Tr. p. 3409)

* * * * *

By Mr. Royall:

Q. Now, you were asked some questions yesterday about whether or not the appropriation of \$3,800,000 for the eleven months period would be increased or possibly increased in the event of increased sales, and I think your testimony was it would be. Has there been any increase, or was there any increase in that figure during the period from August 1st, 1957 to the end of the fiscal year?

* * * * *

(Tr. p. 3410)

* * * * *

A. There was no increase in the advertising and promotion appropriation during the course of the fiscal year—during the course of the eleven months of the fiscal year.

* * * * *

(Tr. p. 3418)

* * * * *

Edwin A. Snow

was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Hearing Examiner Haycraft: Will you give me your full name, Mr. Snow?

The Witness: Yes. Edwin A. Snow.

* * * * *

Edwin A. Snow—Direct

DIRECT EXAMINATION

By Mr. Tincher:

Q. Hello, Mr. Snow. Would you tell us, sir, what your

(Tr. p. 3419)

occupation is? **A.** I am the advertising manager of The Procter & Gamble Company.

Q. Are you a corporate officer? **A.** No.

Q. And how long have you been with the company, sir?

A. I joined the company in 1933.

Q. And what line of work have you been in with the company generally speaking? **A.** Well, since that date I've had varying degrees of responsibility for the advertising and promotion of individual brands—

* * * * *

A. (Continued) I will repeat what I said. I joined the company in 1933, and since that time I've had varying degrees of responsibility for advertising and promotion of individual brands and groups of brands. In 1954 I was made manager of the brand promotion division having responsibility for soap and synthetic products. Last fall, October, 1957, I became the advertising manager of the company.

* * * * *

(Tr. p. 3420)

* * * * *

Q. All right, sir. Now the great majority of Procter & Gamble advertising is spent on household brand name products as distinguished from bulk items or items sold to industrial concerns, is it not? **A.** That is correct.

Q. Now just what exactly are your duties in your present capacity? I realize you told us your dual function

Edwin A. Snow—Direct

more or less, but specifically what do you do in these functions? A. Well; they are many. In connection with the soap division where I am the advertising manager I have the basic responsibility, subject to approval by general management in many cases, for the advertising and promotion of the soap division brands.

Acting in my staff capacity with the other independent advertising departments, including the soap department, I have functions which have to do with coordination and avoiding

(Tr. p. 3421)

of conflict and confusion between the various advertised brands in the different product divisions.

* * * * *

Q. And part of that coordination, Mr. Snow, would be to attempt to plan the advertising of the brands under your supervision so that they can be utilized to earn the maximum possible discounts in advertising, would it not? A. The answer to that is that I do no planning whatsoever with relation to the discounts to be earned by the individual brands. The fact is that each independent brand has its own organization and, working with its advertising agency, recommends the kind of advertising and promotion which it thinks best in its own interests.

In the purchase of media, for example, there are many different requirements depending on the brand and its markets, and I'm confident that those recommendations are made with very little if any reference to discounts.

Q. There is no effort on the part of the company in expending the total amount that's spent for advertising to secure discounts? A. The answer to that is that when the independent proposals of the various brands are

Edwin A. Snow—Direct

approved, the various requirements for media such as television and magazines are assembled and,

(Tr. p. 3422)

of course, we take advantage of the discounts which are available to us on published rate cards which are determined by the individual media.

* * * * *

A. Would you repeat that question, sir?

By Mr. Tincher:

Q. Yes. It may not be verbatim. It will be approximately the same. Now, in securing discounts it isn't just an accident or a haphazard business of each brand running all its own ads, then after it's all over, the advertising has been run, you see if you get a discount? As contrasted to that isn't it a matter of taking what each brand's going to spend and bringing it together at some central point and projecting it to the future and trying to see if you can get discounts?

* * * * *

(Tr. p. 3423)

A. There is very little of that done to my knowledge.

Hearing Examiner Haycraft: Of what done? Let's get it straight. Very little of what done?

The Witness: As I said earlier, the individual brands recommend the advertising media they think they should use in their own interest, and a variety of factors enter into those decisions. When the various brand proposals are made, they are made without reference to any discounts to my knowledge. They are made in the interests of the individual brands. Now, of course, when the expenditures are basically approved and ways of spending are approved, the advantages of the discounts are cal-

Edwin A. Snow—Direct

culated, depending on which brands may use certain magazines, which brands may use certain television networks, and the costs are made known to the individual brands. We, however, as a principal rule buy the media which will reach the most consumers and in the way that the brands want to reach them, and discounts play a very small part in those decisions.

By Mr. Tincher:

Q. Of course, with most of your products, your soaps and detergents and cooking products, food products, things of that nature, media that will reach the audience you're aiming at is primarily women's magazines, is it not?
A. No, that is not right. There are a number of media available to our household products such as television, radio, magazines, Sunday supplements.

(Tr. p. 3424)

Q. Wait a minute. I probably confused you. Within the magazine field, the type of magazine that will be used by Crisco and will be used by Tide, by Ivory soap and by Clorox bleach are generally speaking women's magazines rather than just clear across the strata of all magazines, are they not?
A. That is correct.

Q. Now the same thing is true in selecting radio or television. The time period involved will be approximately the same to catch the housewife while she is home; isn't that correct?
A. I can't answer a question as broad as that because in the purchase of television we purchase both nighttime and daytime television. We are interested in reaching housewives, but on many of our products we have an interest in the children and the men as well, a dual audience.

* * * * *

Edwin A. Snow—Direct

(Tr. p. 3439)

* * * * *

Q. Mr. Snow, will you tell us just how the advertising agencies enter into the advertising of The Procter & Gamble Company, at what point they come in and what they do, what coordination or liaison there is between the company and the advertising agencies? A. Each of our advertised brands employs an advertising agency.

Hearing Examiner Haycraft: Different agencies are they?

The Witness: We are now working with ten different

(Tr. p. 3440)

agencies.

Hearing Examiner Haycraft: All right, go ahead.

The Witness: But each brand works with an advertising agency. Each brand has its own advertising organization. The advertising group within the agency responsible for the brand and the same in our advertising departments work very closely together and collaborate in developing and implementing what they regard as the best advertising and promotion program on that individual brand. It is frequently very hard to distinguish, for example, the relative contributions of our people and the advertising agency toward any specific proposal. Does that cover your question, sir?

By Mr. Tincher:

* * * * *

Q. Mr. Snow, does The Procter & Gamble Company advertise extensively in trade journals as contrasted to magazines reaching the consuming public? A. I do not know the exact figures on that, but I can tell you that our advertising in consumer publications is relatively—considerably heavier than in trade publications.

Edwin A. Snow—Direct

Q. Now let me ask you the same question, sir, with respect to farm magazine editions as compared with general consumer

(Tr. p. 3441)

magazines.

* * * * *

A. Again I do not have the exact figures in mind and I know that the situation changes from time to time, but in general we do not advertise as heavily in farm magazines as we do in general consumer publications.

By Mr. Tincher:

Q. All right, sir. Now are the magazines used by Procter & Gamble nationally circulated magazines as contrasted to local or regional magazines? A. I don't think there can be a general answer to that question because I am aware, for example, that some of our brands from time to time have used the magazine "Sunset" which has most of its circulation on the Pacific Coast, but in general the magazines we use have national circulation.

Q. And would that answer, sir, include Ladies' Home Journal? A. Yes indeed.

Q. Good Housekeeping? A. (Nods head.)

Q. Let me read off several: Better Homes & Gardens, Parents, magazines of that nature, are they all nationally circulated? A. All of those magazines are circulated nationally.

* * * * *

(Tr. p. 3442)

* * * * *

Q. Now, sir, can you tell us the approximate percentage of Procter & Gamble advertising that is on spot television?

A. I cannot.

Q. The same for television programs.

Edwin A. Snow—Direct

Hearing Examiner Haycraft: You mean their total?
Mr. Tincher: Yes, sir.

A. I cannot, but I would like to explain a little why. I am not familiar with the advertising of the toilet goods brands, the food brands and brands outside of the soap division and the degree to which they spend their money for different media is something of which I have really no knowledge.

Q. Well, let's talk about where you do have some knowledge,

(Tr. p. 3443)

sir, if we may, and within that area the same question: the per cent of money that is spent on spot T. V. A. I don't know the answer to that, but I can say that the amount fluctuates very widely from time to time depending on the needs of the individual brands and particularly in connection with the introduction of new products, so there's no constant percentage that I'm aware of.

Q. Would that mean that there would be no constant percentage on any other media? A. That is correct.

* * * * *

(Tr. p. 3454)

* * * * *

Q. Mr. Snow, does Procter & Gamble receive the maximum discount rate on NBC television? A. My understanding is that we do receive currently the maximum discount on the NBC television network.

Q. Now, the same question, sir, with respect to the CBS television network? A. The same answer, yes.

Q. The same question with respect to the ABC television network? A. The answer is no.

* * * * *

Edwin A. Snow—Direct

(Tr. p. 3456)

* * * * *

Q. Let me ask you, sir, if the programs which used to be known on radio as the soap box operas, let me ask you if those programs have been transferred from radio to television in recent years by the Procter & Gamble Company?

A. None of those programs in their radio form have been transferred to television. However, the titles of several of the programs are now being produced as daytime television programs.

Q. All right, sir, so am I correct in saying that in recent years Procter & Gamble has switched from radio to television on its programs, not spots, on programs?

A. That is correct.

Q. Am I correct in saying that with reference to spots, The Procter & Gamble Company in recent years has switched from radio to television?

A. That is correct. May I add, in large part. We may be continuing and I believe we are continuing to use radio spots in certain markets on certain brands, for particular reasons

(Tr. p. 3457)

applying to those brands.

Q. Yes, sir. Let me ask you, then, generally speaking, if The Procter & Gamble Company doesn't recognize television spots as being more valuable to the brand being advertised than radio spots?

* * * * *

A. In general, and I think this is perhaps confidential information, but it is purely my own opinion. In general, I believe that television spots are, today, more productive than radio spots, because the listening to radio has de-

Edwin A. Snow—Direct

clined very importantly, as there have been increases in the viewing of television.

By Mr. Tinchler:

Q. And is there an advantage in the TV spot taking, for example, the product, Comet Cleanser, in being able to tell the housewife about it and at the same time pictorially demonstrate that the bleach—

* * * * *

(Tr. p. 3458)

* * * * *

A. In my opinion, the opportunity of illustrating and reaching the consumer via her eyesight as well as through her ear makes a television commercial more effective than a radio commercial on Comet.

* * * * *

Q. Turning away from network television, sir, and turning to spot television by local television stations, do those stations have discount structures on spot television?

A. My understanding is that a great number of television stations do have discount structures for the purchase of spot time on those stations.

Q. All right, sir. Now, considering television and radio as a whole, and if you can please segregate the answers, is there any advantage to an advertiser advertising over a station that affiliated with one of the national networks as contrasted to advertising over a local, independent, station that has no affiliations?

* * * * *

A. My answer is not necessarily. It depends, if I may for a moment say, that the value of a spot depends in great part, large

Edwin A. Snow—Direct

(Tr. p. 3459)

part, predominantly on the number of people who see it and that depends on the network program in general, or program, whether it be network or not, to which the spot is contiguous; and it could readily be that a program on a non-network station, with a high listening audience, could be a more valuable spot than a spot contiguous to a low-rated network program.

Q. All right, sir, let me ask you, generally speaking, though, do not the high-rated network programs have far greater audience in a community with a local station than any program the local station would have on at the same time?

* * * * *

A. Generally speaking, I would think that is true.

* * * * *

(Tr. p. 3461)

* * * * *

Q. Mr. Snow, where we have a situation where a Procter & Gamble program is sponsored by several Procter & Gamble brands, who makes the determination of which brands will sponsor that program and how the advertising time on that program would be allotted among the brands? A. I would like to answer that by saying that each individual program, each individual brand, is in the market for certain television advertising, certain day parts, night time, day time, depending on the media structure it regards as best for itself. These needs are made known as the individual brand budgets are approved or subsequently revised, and our media section is responsible for the coordination of those media interests or requests. A suggested plan of co-sponsorship is developed by our

Edwin A. Snow—Cross

media section, which must be approved by the individual brands and must be acceptable to them before it is adopted.

* * * * *

(Tr. p. 3462)

* * * * *

Q. Mr. Snow, you have just mentioned how this problem, how the solution would be worked out by the media section. Now, this media section has available to it the various discount structures and rates of the media involved, does it? A. Yes.

* * * * *

(Tr. p. 3464)

* * * * *

CROSS-EXAMINATION

By Mr. Royall:

Q. Mr. Snow, in connection with your various answers with reference to television and radio programs, did you intend to include Clorox as being connected with those programs? A. No.

* * * * *

(Tr. p. 3465)

* * * * *

Q. Do I understand correctly that the media section that you referred to recommends to the brands the media or how does it work? A. The media section—I will tell you my understanding of how it works. The advertising agencies and the brand groups at the time of working out the media structures, which seem best for that brand so as to get maximum coverage of the audience they want and a desirable frequency, ask the advice of our media section in preparing their appropriation proposals, and

Edwin A. Snow—Cross

in revising their budgets as market changes occur throughout the year. The brand organizations and agencies on each individual brand recommend the television, magazine, newspaper supplement, or whatever media structure seems best for that brand. That is done independently by individual brands and product divisions.

Hearing Examiner Haycraft: Recommends to whom?

The Witness: Recommends to the advertising manager of the particular advertising department involved, Mr. Haycraft.

A. (Continuing) Subject to his approval, the individual media recommendations are made known to the media section and, of course, the advertising agency involved which recommended the media structure, in the first place.

It could be that the television required, such as in one

(Tr. p. 3466)

day part, a daytime program, another day part, a nighttime program, in the interest of coverage of the market, would be made known to our media section, and in many cases the programs owned by Procter & Gamble and the various brands would suit the media requirement requested. In other cases, the individual brand would go out and independently purchase the television program, which suited its media requirements.

In many cases, our brands co-sponsor with other of our own brands. In other cases, they co-sponsor with manufacturers of other products. But the programs are purchased to fit the media requirements of the individual brand.

Mr. Royall: Thank-you. That is all.

Hearing Examiner Haycraft: But you raise a point there. I thought I understood it. Maybe I do and maybe I don't. I understood you to say that the media section,

Edwin A. Snow—Redirect

one of its functions, was to coordinate the requirements of the various brands in their departments, and so that they would be sort of a clearing house. So that when they would make their contacts with the advertising agencies and then with the networks and all that, that they wouldn't be getting in each other's way, or asking for the same thing.

The Witness: That is one of the principal functions that they serve. They coordinate the requests of the individual brands. I meant to say that in some instances

(Tr. p. 3467)

the requirements of the individual brands can be fitted into the over-all program structure that Procter & Gamble has. In other words, a determination might be made that the daytime network program requirement of a brand, such as Joy, could be fitted into a program structure with another brand, such as Ivory soap.

In other cases, if that were impossible, the brand, Joy, would independently have to find the kind of television program that it felt was best in its own interest, and that might wind up co-sponsoring with the manufacturer of a tobacco company, or any other of a number of products.

* * * * *

REDIRECT EXAMINATION

By Mr. Tincher:

Q. I have one question, sir. You testified several times, at least here on cross-examination, that the brand determines what its media requirements are before going to see the media people, and their thoughts. Is that correct?

A. Not entirely correct, because I think I said earlier that the individual brands and agencies call on the media sec-

Edwin A. Snow—Redirect

tion for advice and counsel as to what its media structure should be. A number of factors are considered in addition to the

(Tr. p. 3468)

counsel of our media section, as to what the media structure should be.

(Tr. p. 3474)

Mr. Royall: Your Honor, we have obtained, at the request of counsel for the complaint, the dates for promotions to which they referred in Chicago and in Los Angeles, in 1958.

Hearing Examiner Haycraft: For Clorox, you mean?

Mr. Royall: Clorox, yes.

Mr. Tinch: I have seen the information, sir, and I am prepared to stipulate it.

Mr. Royall: It is stipulated they both occurred in June, 1958.

(Tr. p. 3475)

Norman D. Smith

was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Deveny:

Q. Will you state your name, please sir? A. Norman D. Smith.

Norman D. Smith—Directed

Q. And where are you employed, Mr. Smith? A. Federal Trade Commission, Washington, D. C.

Q. In what capacity are you employed at the Federal Trade Commission? A. I am a business economist.

* * * * *

(Tr. p. 3494)

By Mr. Deveny:

Q. One further thing, Mr. Smith, on the I.B.M. tabulations of the newspaper advertising with The Clorox Company, was there an indication in the volumes of the contracts that you used as your source of material as to the use of color in the advertisements?

Mr. Royall: Objection.

Hearing Examiner Haycraft: Sustained.

Mr. Deveny: Can we explain why we would like to

(Tr. p. 3495)

offer this showing the color advertisements?

Hearing Examiner Haycraft: It would be hearsay. As a matter of fact, I don't think it is sufficiently relevant to make any difference.

Mr. Deveny: Your Honor—

Hearing Examiner Haycraft: It's a difference of opinion as to whether color in newspaper ads—I don't believe there is sufficient relevancy to warrant going into that.

If you really want to prove that you'd better call somebody who placed the ad at that time. It's just a little too distant, too remote.

Mr. Deveny: We're not trying to prove the quality of color; we're just trying to prove the use by Clorox.

Hearing Examiner Haycraft: I know, but we can't even prove it by that. These documents aren't conclusive evidence that they used color.

Norman D. Smith—Direct

Mr. Deveny: Well, they aren't even conclusive they used any number of lines, on that basis, your Honor.

Well, your Honor, I think we would like to proffer the answer to that.

Hearing Examiner Haycraft: All right.

* * * * *

(Tr. p. 3496)

Mr. Deveny: May I have your notes, Mr. Smith, on that?

If allowed to proceed with this line of questioning, we would believe, and expect that the witness would testify that for the period January 1 through March 20th, 1957 the Clorox Chemical Co. newspaper contracts tabulated by the I.B.M. Section of the Federal Trade Commission would show thirty-one newspapers with a total of forty-one insertions, and a total of 39,010 lines were in color, and for the period January 1 through March 20th, 1958 the tabulation would show that in thirty-six newspapers, the total of fifty-three insertions, and a total of 51,010 lines the advertisements were in color.

Mr. Royall: We object to that being a proper proffer.

Hearing Examiner Haycraft: The objection is overruled. I'll let the proffer stand. As I said before, I don't think it's relevant or material as to whether there was color or black-and-white.

* * * * *

(Tr. p. 3521)

* * * * *

Courtroom No. 1, Room 805
United States Post Office and
Courthouse
Cincinnati, Ohio
July 9, 1958

1149a

Norman D. Smith—Direct

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *
(Tr. p. 3577)

* * * * *
Room 332
Federal Trade Commission
Washington, D.C.

Tuesday, 12 August 1958

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *
(Tr. p. 3578)

PROCEEDINGS

* * * * *
(Tr. p. 3579)

* * * * *
Norman D. Smith

was recalled as a witness for the Commission and, having been previously duly sworn, testified as follows:

* * * * *
(Tr. p. 3654)

* * * * *
Mr. Tincher: Mrs. Reporter, please mark as Commission's Exhibit 572 for identification a one-page typed document entitled "Subpoena dated December 2, 1957, paragraph 13, W. T. Young Foods." You will recall that spe

Norman D. Smith—Direct

cific subpoena, sir, dealt with the advertising and promotional expenditures of various acquired and newly developed products of

(Tr. p. 3655)

the Procter & Gamble Company. This particular exhibit, and there are several more, deals with Big Top Peanut Butter and Big Top Salted Peanuts.

I would also like to mark Commission's Exhibit 573-A through D, stapled together and is described the same as the other document except that it deals with other products, Duncan Hines, Gleem, Crest, Comet and again Big Top Peanut Butter and Big Top Peanuts. And Commission's Exhibit 574 for identification is a similarly described document entitled the "Charmin Paper Products Company," and for each of the products in all three of these exhibits, various dates appear.

* * * * *

Mr. Tincher: Now, it is my understanding, and counsel can correct me if I am wrong, that the authenticity of these documents is stipulated and that the dates appearing beneath the designated product name in each case are the dates for which the indicated amounts of expenditures are applicable.

Mr. Royall: That is correct, your Honor.

* * * * *

(Tr. p. 3658)

* * * * *

Mr. Tincher: Mrs. Reporter, please mark as Commission's Exhibit 573-E, it was already through D, sir, that portion of Commission's Exhibit 573-B, which relates solely to Comet. I have torn the page in two and I offer Commission's Exhibit 573-E for identification.

Norman D. Smith—Direct

(The document referred to was marked Commission's Exhibit 573-E for identification.)

* * * * *

(The document referred to, heretofore marked for identification Commission's Exhibit 573-E, was received in evidence, in camera.)

* * * * *

(Tr. p. 3663)

* * * * *

Mr. Tincher: May we mark, sir, as Commission's Exhibit 577 for identification, a one-page typed statement dated July 8, 1958, and this statement, if my understanding is correct, purports to be the expenditure by Procter & Gamble and its affiliates in the United States for spot television

(Tr. p. 3664)

advertising for the fiscal year 1957-58. It was our desire to have for the 12 months of 1957, to be consistent with Commission's Exhibit 447, this information, and I was informed that this would involve a tremendous amount of work and so we are agreeable to accepting this document for the designated period.

* * * * *

(Tr. p. 3665)

* * * * *

(The document referred to, heretofore marked for identification Commission's Exhibit 577, was received in evidence, in camera.)

* * * * *

Norman D. Smith

was recalled as a witness for the Commission and, having been previously duly sworn, testified further as follows:

* * * * *

1152a

Proceedings

(Tr. p. 3699)

* * * * *

Room 332
Federal Trade Commission
Washington, D.C.

Wednesday, 13 August, 1958

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 3755)

* * * * *

Mr. Tincher: Mr. Examiner, at this time I'd like to call your attention to the fact that when Commission's

(Tr. p. 3756)

Exhibit 571 for identification was offered, you commented that you thought it would be a valuable edition to the file here subject to it being established that Nielsen was competent. Of course, that was a contention where the Nielsen situation was in a different picture than it now is. I wonder what your thought on this particular exhibit is now?

* * * * *

(Tr. p. 3757)

* * * * *

Mr. Tincher: It concerns exclusively the product, Comet.

Mr. Royall: Your Honor, I have had insufficient time to go into this. I will object, though, if your Honor rules all Nielsen can be accepted.

Proceedings

Hearing Examiner Haycraft: No, I am not ruling it can be accepted, only what you agreed or do not make sufficient objection to perhaps or I feel it might avoid a trip to Chicago to let a particular paper go in. I'd like to see what Mr. Tincher wants out of this book, see what it's based on. I can tell better by looking at it.

Mr. Tincher: We are interested in the market shares and the types of advertising and types of promotion for the product reported.

Hearing Examiner Haycraft: Give me specific pages

(Tr. p. 3758)

or specific documents so I can see what it is.

Mr. Tincher: Tables 4 and 5 are the market shares. We want the entire section entitled "Consumer Sales" commencing on Page 59 and running to 62.

* * * * *

(Tr. p. 3761)

* * * * *

Hearing Examiner Haycraft: I am going to allow these figures beginning with Page 59 through 62.

* * * * *

If you take them out of the book, Page 59 of the section on Consumer Sales will be 571-A; Page 60 will be 571-B through Page 62. Now, I am receiving those in evidence simply for what the sheet shows, that it is a trend. I am not receiving them as a share of the market because there has been no foundation laid to show that. They have some value to show the general trend, the general idea of how these various products are sold. There may be a supplemental stipulation on it as Mr. Royall commented a while ago, perhaps off the record. We may want to use some of these, too. It may be by stipulation, Mr.

Proceedings

Royall, that you can make them what you want them to be, namely, share of the market, but I can't take them as share of the market on the record at this time.

(The documents were marked Commission's Exhibits 571-A, 571-B, 571-C, and 571-D and received in evidence.)

* * * * *

(Tr. p. 3763)

Mr. Tincher: We offered the special price section also, sir, to show the various promotions that were utilized in selling Comet.

Mr. Royall: Same objection, your Honor, on the same grounds.

Mr. Tincher: I think that is the section just before the red tab.

Hearing Examiner Haycraft. The last section. Do you have the same thing on this for bleaches?

Mr. Tincher: I do not believe so—I will have to correct myself. There are comparable sections.

Hearing Examiner Haycraft: I just don't see where I can make a finding on an exhibit of this kind that would be of any probative value, where this would have any probative value in determining the issues in this case. I think we are getting down a little bit too much into the details on commodities that are not exactly directly in line but in an entirely different market. As I have expressed myself numerous times, evidence of competitive situations or conditions in an entirely different market have no relevancy here. It is true this is a market that is close by. In other words, Comet is found in the store very close to Clorox and other items of that character but they still are an entirely different group of manufacturers and distributors that they have to compete with and you might

Proceedings

have a condition in the abrasive industry for example, an abrasive cleaner, where you see Ajax, Bab-o

(Tr. p. 3764)

and these other items, other companies that are not in the industry at all, where we are going to have to look to see the effect that might make this transaction illegal.

* * * * *

(Tr. p. 3804)

* * * * *

Room 532
Federal Trade Commission
Building
Washington, D. C.

Tuesday, August 26, 1958

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 3805)

PROCEEDINGS

* * * * *

(Tr. p. 3832)

* * * * *

STIPULATION

It is stipulated by the parties that the complainant has offered and, with the exceptions and on the conditions hereinafter set forth, the respondent does not object to, the introduction of the Nielsen figures produced by the respondent and designated as Commission Exhibits 621 (a) to 634 (c), inclusive, showing, as to Toilet Soap, Package Detergents, Abrasive Cleansers, Dentifrices, Shampoos, and Shortening and Lard, the sales in the national "universe" there

Proceedings

shown and the sales of Procter & Gamble products in each of said categories, and showing the market share of Procter & Gamble products in each of said categories.

The conditions under which the respondent agrees to this stipulation are as follows:

(a) The "universe" and market share shown by Nielsen Index in the exhibits covered by this stipulation as to these products is to be conclusive on the complainant.

(b) This data may be offered only in this proceeding and only for the purpose of showing the market share of the various Procter & Gamble products in the designated periods.

(Tr. p. 3833)

(c) Respondent consents hereto in the interest of expedition and without any admission as to the materiality or relevancy of any of the data covered by this stipulation and specifically (but not exclusively) reiterates its objection to the materiality and relevancy of data concerning dentifrices, vegetable shortenings and shampoos.

(d) This stipulation does not commit the respondent to the accuracy or validity of any other part of the Nielsen Index either in this or in any other proceeding except as otherwise agreed of record herein.

In view of the fact that during complainant's case in chief the respondent has voluntarily agreed to this and a prior stipulation relating to certain market shares under the Nielsen Index, the respondent in its defense and the complainant in rebuttal or, where necessary, in cross-examination may introduce without verification or authentication any Nielsen market share figures which the Examiner may deem relevant.

This the 26th day of August, 1958.

WILLIAM R. TINCER

KENNETH ROYALL

Atty. for Respondent

Proceedings

Mr. Royall: Your Honor, that is satisfactory to the Examiner, is it, sir?

(Tr. p. 3834)

Hearing Examiner Haycraft: Yes.

* * * * *

Mr. Tincher: In the stipulation now spread of record, sir, it includes by reference, sir, Commission's exhibits for identification 621 through 634, inclusive. We have marked these documents, they all have at least two parts and some four parts; in other words A and B or A to D.

* * * * *

(Tr. p. 3835)

* * * * *

Mr. Tincher: And as Commission's Exhibit 622-A and B for identification a document entitled, "Trend Table 4, Toilet Soap, Consumer Sales—By Item—Dollar Basis, At Cost Price to Consumer."

* * * * *

As Commission's Exhibit 624-A and B for identification, a document entitled, "Trend Table 5, Shortening and Lard, Consumer Sales—By Item, Pound Basis."

As Commission's Exhibit 625-A through E for identification, a document entitled, "Trend Table 4, Packaged Detergents, Consumer Sales—By Item, Dollar Basis, At Normal Cost to Consumer."

As Commission's Exhibit 626-A through D for identification, a document entitled, Trend Table 5, Packaged Detergents, Consumer Sales—By Item, Unit Basis."

As Commission's Exhibit for identification 627-A and B, a document entitled, "Trend Table 4, Abrasive Cleansers, Consumer Sales—By Item—Dollar Basis, At Cost Price to

Proceedings

(Tr. p. 3836)

Consumer."

As Commission's Exhibit 628-A through D for identification, a document entitled, "Table 3, Bimonthly Shampoo Sales in Drug and Grocery Stores Combined, Cost Price to Consumer—Dollars," that description being on page A, page B being entitled, "Trend Table 5, Shampoos, Consumer Sales by Item, Unit Basis;" C and D having the same description as B.

As Commission's Exhibit for identification 629-A through C, being entitled, "Trend Table 4, Shampoos, Consumer Sales—By Item—Dollar Basis, At Cost Price to Consumer."

Commission's Exhibit 630-A through C, being entitled, "Trend Table 5, Shampoos, Consumer Sales—By Item, Unit Basis." I notice on this particular one, and perhaps several others, sir, it even goes back to 1954, but we have the same comment with reference to the pre-'56 and '57 period.

Commission's Exhibit 631-A through C, entitled, "Trend Table 4, Shampoos, Consumer Sales—By Item—Dollar Basis, At Cost Price to Consumer."

Hearing Examiner Haycraft: What is the product?

Mr. Tincher: Shampoos.

Commission's Exhibit 632-A through D for identification, entitled on page A, "Trend Table 4, Dentifrices, Consumer Sales—By Item—Dollar Basis, at Cost Price to Consumer." The same description on B, C, and D.

(Tr. p. 3837)

As Commission's Exhibit for identification 633-A through D, entitled, "Trend Table 5, Dentifrices, Consumer Sales by Item, Unit Basis."

Proceedings

And as Commission's Exhibit 634-A, B, and C for identification, a document entitled on page A, "Share of Ounce Sales on Dentifrices, Drug Stores"; page B, the same information in Food Stores; page C, same information Drug and Food Stores Combined.

* * * * *

Mr. Tincher: We offer those Exhibits.

* * * * *

(Tr. p. 3838)

* * * * *

Hearing Examiner Haycraft: They will be received in evidence in support of the allegations of the complaint in paragraphs 6 and 13. The objection is overruled.

(The documents referred to, heretofore marked for identification Commission's Exhibits 621-A through D; 622-A and B; 623-A through D; 624-A and B; 625-A through E; 626-A through D; 627-A and B; 628-A through D; 629-A through C; 630-A through C; 631-A through C; 632-A through D; 633-A through D, and 634-A through C, were received in evidence.)

* * * * *

(Tr. p. 3839)

* * * * *

Hearing Examiner Haycraft: As I understand it, you have closed your case in chief. What do you have to say, Mr. Royall? The Respondents will begin their defense.

Mr. Royall: We have some motions as I stated to your Honor and perhaps the case should not be finally closed until we have made them and there are a number of them. If I may I would like to proceed on them.

(Tr. p. 3840)

Hearing Examiner Haycraft: Go ahead.

Proceedings

Mr. Royall: Your Honor, we move to strike certain of the complainant's exhibits and in connection therewith we will ask that the complainant be compelled or ordered to state the purpose of certain exhibits that may be admitted.

Your Honor, I believe we sent to counsel and to your Honor to serve as information only, a copy of what would have been a written motion. We have modified that a little in the elimination of some things that we formerly asked to strike, and I would like to make this in the form of an oral motion, your Honor.

Hearing Examiner Haycraft: Very well.

* * * * *

(Tr. p. 3862)

* * * * *

Mr. Royall: ... Now, your Honor, the last one or two of these are

(Tr. p. 3863)

Exhibits 323 and 324. Now, the history of those makes it particularly important that we know—

Hearing Examiner Haycraft: I can visualize that right away. I don't agree with you that they cannot be used to show interest. I think they can. I haven't read them, but I mean just on the basis of your motion here,—

Mr. Royall (interposing): Yes, sir.

Hearing Examiner Haycraft (continuing): —the mere fact that they were written by subordinates does not express the views of the respondent. They may not express the views, but they may disclose facts, and that is the important thing, and for that reason they would be admissions against them.

Mr. Royall: Your Honor, you have before you the views that they were—two views. First, they were furnished specifically for the cross-examination of Mr. Morgens and

Proceedings

were not, in our opinion, required to be produced under the subpoena, were not produced under the subpoena.

Hearing Examiner Haycraft: That wouldn't make any difference as to their admissibility.

Mr. Royall: No, sir, and they did not cross-examine Mr. Morgens about them and if we had known that they were not going to cross-examine him, we would have taken a different attitude when they were offered. They were offered at a time when the only purpose stated was to cross-examine Mr. Morgens.

* * * * *

(Tr. p. 3864)

* * * * *

Mr. Royall: And the documents, as your Honor has already said, were written by subordinates. And I think the other points we made, your Honor has already in mind and, therefore, it is unnecessary for me to say further, except I renew my request that they either be stricken or—if there is any other purpose it be stated. And your Honor has stated what you conceive to be the status of it. If there is any other, I would like to have him state what it is.

Hearing Examiner Haycraft: Do you have anything to add to what I said?

Mr. Tinchier: No, sir; I just have a question in my own mind. I assume that our silence doesn't mean we agree with what counsel says is the purpose of the document.

Hearing Examiner Haycraft: It might indicate that you agree with what I said, though.

Mr. Tinchier: Yes, sir, it does.

* * * * *

(Tr. p. 3871)

* * * * *

Proceedings

Hearing Examiner Haycraft: . . . There may be a time, as I have indicated, in this case—as I have in others—that I had a feeling as to the matter of effect of competition that that was something that had to be spelled out by the Commission from all of the facts that existed. Even the existence of competition. But the Court, as I pointed out in the International Shoe case, it was plain that they were willing to listen to opinion testimony of members in the trade that had to deal with the practical problems everyday, and I suppose to that extent they might be termed experts, and the Court took that testimony.

I am very frank to say that I don't give a whole lot of weight to such testimony, and I would rather decide a case on the facts that are developed without that type of testimony. Sometimes you can't help it, you have to have it.

* * * * *

(Tr. p. 3889)

* * * * *

Mr. Royall: Your Honor, we want to make a comment about expert witnesses—

Hearing Examiner Haycraft: I would rather save that for the argument at the end of the case.

Mr. Royall: This is a procedural matter.

From time to time during the hearing counsel have

(Tr. p. 3890)

stated their intention to produce a marketing expert in this case, the Examiner at one time indicated interest in one being produced.

Since any marketing and economic testimony upon which the complainant might rely would clearly be a part of the complainant's case in chief we would, of course,

1163a

Proceedings

object to any such witness being offered by the complainant after the close of its case in chief.

Hearing Examiner Haycraft: That would depend on whether you called one or not.

* * * * *
(Tr. p. 3896)

Mr. Royall:

* * * * *
(Tr. p. 3899)

* * * * *
Therefore, we withdraw our motion to strike evidence appearing in the record as we will later indicate.

Hearing Examiner Haycraft: You can hand that to the reporter, can't you?

Mr. Royall: Yes, sir; I have a list of the lines and pages on hand.

This does not, your Honor will note when you see it, include the testimony where it is inadmissible on other grounds; for example, hearsay.

We reserve the right to offer contradictory evidence and in any event we contend and will contend that this testimony appearing in the record, to which motion to strike is now withdrawn, is neither material nor relevant, and is entitled to no weight in the determination of this case.

The items of such testimony which was admitted by your Honor and then stricken on our motion—

Hearing Examiner Haycraft: You are going to give that to the reporter?

Mr. Royall: We hand that to the reporter.

(Tr. p. 3900)

(The list is as follows:

Proceedings

**WITHDRAWAL OF MOTIONS TO STRIKE
TESTIMONY**

PAGE AND LINE(S)

- p. 1685, lines 8 and 9.
- p. 1686, line 24 through page 1687, line 4.
- p. 1690, line 10, continuing motion to strike testimony
appearing between pages 1687 and 1690.
- p. 1696, line 6.
- p. 1698, line 7; line 21.
- p. 1699, line 14.
- p. 1700, line 9; line 18.
- p. 1701, line 23.
- p. 1702, line 7; line 18.
- p. 1703, line 1; line 9; line 20.
- p. 1704, line 1; line 10.
- p. 1705, line 12.
- p. 1717, line 18; line 24.
- p. 1719, line 15; line 24.
- p. 1720, line 6.
- p. 1721, line 19.
- p. 1722, line 2; line 10; line 20.
- p. 1723, line 3; line 16.
- p. 1724, line 24.
- p. 1729, line 17; line 25.
- p. 1730, line 8.

(Tr. p. 3901)

- p. 1731, line 5; line 13.
- p. 1732, line 6; line 16.
- p. 1742, line 23.
- p. 1810, line 23.
- p. 1811, line 8.
- p. 1812, line 12.

Proceedings

p. 1879, strike continuing motion to testimony appearing between page 1878, line 25 and page 1879, line 15.

p. 2174, line 1; line 11.

p. 3275-B, line 12; line 20.

Mr. Royall: Your Honor, in connection with that same situation your Honor will recall that during the hearing here, on August 12th I reserved my objections to certain documents which were of the same general category as this evidence.

* * * * *

(Tr. p. 3902-A)

* * * * *

All right, sir; we do not make any objection to those items which—I guess I better read them in the record, your Honor.

76, 82, 83, 84, 87, 88, 89, 93, 141, 143, 147, 148, 149, 152, 156, 157, 160, 168, 169, 170, 184, 188, 190, 192, 193, 195, 198, 199, 205, 206, 218, 224, 280, 281, 314, 316, 363, all relating to soaps, detergents, and cleansers.

Hearing Examiner Haycraft: In view of that then each and every exhibit which counsel has just now referred to are received in evidence.

(Thereupon, the documents referred to, heretofore marked Commission's Exhibits 76, 82, 83, 84, 87, 88, 89, 93, 141, 143, 147, 148, 149, 152, 156, 157, 160, 168, 169, 170, 184, 188, 190, 192, 193, 195, 198, 199, 205, 206, 218, 224, 280, 281, 314, 316, and 363 for identification, were received in evidence.)

* * * * *

(Tr. p. 3907)

* * * * *

1166a

Proceedings

Room 332
Federal Trade Commission
Washington, D. C.

Monday, 17 November 1958

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

APPEARANCES:

WILLIAM R. TINCER and THOMAS A. DEVENY III, Attorneys for the Federal Trade Commission. v

RICHARD W. TODD, of the firm of Dinsmore, Shohl, Dinsmore and Todd, 12th Floor, Union Central Building, Cincinnati, Ohio, Attorney for the Respondent.

KENNETH C. ROYALL and F. W. R. PRIDE, of the firm of Royall, Koegel, Harris and Caskey, 100 Broadway, New York City, Attorney for the Respondent.

ROBERT D. LARSEN, 500 Wire Building, 1000 Vermont Avenue, N.W., Washington, D.C., Attorney for the Respondent.

(Tr. p. 3908)

PROCEEDINGS

(Tr. p. 3911)

Mr. Royall: Your Honor, as you will recall, at the last hearing we stated that we would not file and did not intend to file a written motion to dismiss these proceedings for lack of evidence, but would do so orally. We now so move; that is, move for the dismissal of the case for lack of evidence to establish any liability on the part of the respondent on any of the grounds set forth in the complaint, including the allegation that the effect of the acquisition may be sub-

Proceedings

stantially to lessen competition or tend to create a monopoly. We contend that on the record before you, as it now stands, the government has failed to make out a case against the defendants under Section 7 of the Clayton Act, upon which the complaint is based.

We realize, as I believe we stated on or off the record, that your Honor may desire, as many examiners do, either to reserve decision on this question or to overrule the motion at this time pending receipt of all the evidence, including the Respondent's.

Hearing Examiner Haycraft: That is my position, the latter.

(Tr. p. 3912)

For that reason, the motion is denied.

I don't want to consider this record until I have your testimony in. I think, that as we have gone along, apparently in the development of the case it is what we would call a conglomerate acquisition. Such an acquisition was mentioned in the debates and in the committee reports. And while it is new from the old statute before the amendment was put on there in 1950, I think the courts are going to have to decide just what was meant by that phrase, by that term. The only way we can get a decision from the courts is to give them a case, and that is what we have here, the first case, I believe, where the Commission has attempted to establish that type of an acquisition, showing that there has been a violation of law. We are pioneering on it.

For that reason I was quite liberal in the rulings with respect to the admission of evidence in support of the allegations of the complaint, and I will necessarily be equally liberal with you in attempting to meet those.

Proceedings

(Tr. p. 3917)

Mr. Royall:

* * * * *

I want to say it is not our intention, your Honor, to offer an economist or market expert. Complainant did not do so, and it is not our intention to do so.

Hearing Examiner Haycraft: That is a great relief to me.

Mr. Royall: I am glad to hear that, your Honor.

The reason I say that is, your Honor one time or two times said to the plaintiff that they ought to put on an expert or consider him so, and I am glad that the result which has finally arisen is satisfactory.

* * * * *

(Tr. p. 3924)

* * * * *

V. L. Montgomery

was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Royall:

Q. Will you state your name and address? A. V. L. Montgomery, 2917 Northwood Drive, Alameda, California.

Q. Mr. Montgomery, what is your position with the Clorox Company at this time? A. Vice president, manufacturing.

Q. Did you hold a similar position with similar functions with the Clorox Chemical Company? A. I did.

Q. When did you first come with the Clorox Chemical Company in any capacity? A. I beg your pardon?

V. L. Montgomery—Direct

Q. In any capacity, when did you first come with them?
A. May of 1939.

Q. When did you take over the position you now hold, and whatever its title is? A. In the fall of 1953.

(Tr. p. 3925)

Q. What is your educational background, Mr. Montgomery? A. I went to Illinois and graduated as a chemist.

Q. Will you give us, very briefly, what your business experience was prior to your employment by Clorox Chemical Company? A. A complete history or just prior—

Q. Give us what business you worked in and in general what you did, not in great detail. A. Just prior to my coming with the Clorox Chemical Company I was in business in Rockford, Illinois, operating and partner of the Rockford Commercial Laboratories.

Q. What years did you work with the Rockford Laboratories, approximately? A. I believe it was in 1937.

Q. And prior to that time you had worked elsewhere?
A. Prior to that I had been in research chemistry and as a superintendent of a plant.

Q. What experience, if any, did you have with liquid bleach when you were with the Rockford Commercial Laboratories? A. The Rockford Commercial Laboratories manufactured a household solution of liquid bleach.

Q. What was its name? A. It was called Wonder Wash.

* * * * *

(Tr. p. 3926)

* * * * *

Q. Did you yourself participate in making liquid bleach at that time? A. I am sorry, I didn't hear that.

V. L. Montgomery—Direct

Q. When you were with the Rockford Laboratories, did you personally have any activity about the manufacture of liquid bleach? A. I did.

Q. Will you describe what your experience there was, and what you did? A. We manufactured a household solution that was sold direct to the housewife through sales-ladies selling house to house.

Q. What was the process you used at that time? A. The process used was one of introducing chlorine into a caustic solution in a rubber-lined barrel. That was the fundamental principle.

Q. And as a result of that and further experience, are you familiar with the equipment necessary for the manufacture of

(Tr. p. 3927)

liquid bleach that is generally necessary in various sized operations? A. I am.

Q. What is the equipment necessary for a small operation, a very small operation?

* * * * *

A. I am thinking of a small operation such as the one that we had in Rockford, Illinois, one of producing in volume approximating 100 to 150 gallons, or the equivalent of thirty to fifty cases a week.

Q. What would the equipment cost for an operation of that size?

* * * * *

(Tr. p. 3928)

* * * * *

Q. Do you know about what it would cost? A. At the present time?

Q. Yes, sir. A. I would be safe in saying that it would cost less—let us put it this way: In the magnitude

V. L. Montgomery—Direct

of a few hundred dollars. I wouldn't want to specify any particular amount.

Q. Do you think it would be as much as \$500? A. Possibly, but I doubt it.

* * * * *

(Tr. p. 3930)

* * * * *

Q. The next question was and now is, Mr. Montgomery, how in general is liquid bleach made today?

* * * * *

Q. Based on your experience at the present time. A. Liquid bleach today is made by—and I am only going to refer to fundamental principles involved—liquid bleach today is made by introducing chlorine into a caustic soda solution.

Hearing Examiner Haycraft: Is that in a certain proportion?

The Witness: That is in pre-determined proportions.

Hearing Examiner Haycraft: Depending on the quantity you want to make and the size of the receptacles

(Tr. p. 3931)

used.

The Witness: Those are all factors.

By Mr. Royall:

Q. In what type of vehicle is that mixed? A. It is mixed—it is processed, I think is a better form—it is processed either in a plastic or rubber-lined steel or iron container and at one time concrete tanks were used. I am not aware that any are used at the present time. But the processing goes on in protected metal containers.

* * * * *

V. L. Montgomery—Direct

Q. The question is how and when do you determine whether the reaction which you described a moment ago is stopped, and when the—— A. In our plants we determine that point through chemical analysis.

Q. After that is determined, what step remains? Merely the bottling? A. It is a matter of clarifying the solution and then

(Tr. p. 3932)

bottling.

Q. On those particular elements that you have described, does it or does it not take know-how to produce a generally marketable bleach, any special know-how? A. That is a difficult—the matter of know-how, I am trying to define “know-how” in my own mind as to what is intended. One would have to—if I may——

Q. Yes, sir, go right ahead. A. ——add to that. Of course, it is important that one knows how to read instructions and to understand instructions. One does not necessarily have to have a chemical education, a college education.

(Tr. p. 3934)

The Witness: It is possible to go into a household liquid bleach business by buying concentrated bleach from those that do have the know-how and merely dilute the solution.

Hearing Examiner Haycraft: I can understand that. But his question was how to make it up; that is, he would know, at least it would be represented to him that all he had to do was add what—water?

The Witness: All he would have to do is add water.

(Tr. p. 3935)

V. L. Montgomery—Direct

Hearing Examiner Haycraft: I want the record to show what the facts are on that point. As I have said, I have had some experience with chlorine myself and it isn't anything to play with if you don't know what you are doing.

The Witness: There are definite instructions on how to handle these matters.

Hearing Examiner Haycraft: Somebody who gives those instructions must know what is to be done.

The Witness: It is a question of interpretation as to the magnitude of what we are talking about, and that is why I hesitated.

Hearing Examiner Haycraft: All right.
Go ahead.

(Tr. p. 3936)

* * * * *

By Mr. Royall:

Q. In your position as Vice President in charge of manufacturing of the Clorox Company now, and the Clorox Chemical Company previously, have you had occasion to give any consideration to the quality of the product? A. Yes, sir.

Q. Have you had occasion to give consideration to the care required to make a better quality bleach? A. Yes, sir.

Q. I don't believe there are now any patents outstanding on the bleach, are there? A. We do not operate under any patents.

(Tr. p. 3937)

Q. I don't want you to go into any technical discussion, but what is one of the factors which affect the quality of the bleach? A. One that we feel is extremely important is the alkalinity balance of the solution.

V. L. Montgomery—Direct

Q. Does that relate to caustic in any way? You mentioned caustic. A. It is the control of the amounts of free caustic soda or sodium hydroxide remaining in the solution.

Hearing Examiner Haycraft: What are the chemical symbols of the two products that are put together? What is the resulting symbol?

The Witness: The fundamental chemical reaction—however, there are several side reactions but I do not feel capable of getting into; that is a specialists job—the fundamental chemical reaction is one between caustic soda—NaOH—and Chlorine—Cl₂—forming sodium hypochlorite, which is NaOCl; sodium chloride, which is ordinary salt; and water.

By Mr. Royall:

Q. This free caustic which you mentioned, what effect, if any, does that have on the germicidal efficiency of a liquid bleach? A. It makes it more active.

Q. More effective?

(Tr. p. 3938)

A. More effective, I speak of that—I would like to add this—I speak of that as being more active because of what our background is. We have advertised that for years, incidentally.

* * * * *

Hearing Examiner Haycraft: That is a promotion letter dated July 6, 1956—372-A to -D.

By Mr. Royall:

Q. I call the witness's attention to an advertisement in 1956, from the exhibit, in which the representation is made, "No other home laundering product equals Clorox in germ-

V. L. Montgomery—Direct

(Tr. p. 3939)

killing efficiency."

Are you familiar with that type of representation?

A. I am.

Q. Has that same representation been made by the Clorox Chemical Company as far back as 1949 or 1950, or similar ones? A. For a number of years; yes, sir. 1949 or 1950, I would say, yes, sir, definitely.

Q. I call your attention to the representation made in Commission's Exhibit 423, "And no other home laundering product can give your Clorox cleanliness for Clorox is the most efficient germ killer of its kind."

Would you say the same about that? A. That says substantially the same thing as the other exhibit stated.

Q. And it has been in existence as long as you stated as to the other? A. As far back as you referred to, yes.

Q. I call your attention to Commission's Exhibit 424, the representation in the advertisement reading as follows, "And Clorox provides another health protection. No other home laundering product equals Clorox in germ-killing efficiency."

Is that in the same category as the others? A. That is in the same category.

(Tr. p. 3940)

* * * * *

Q. Mr. Montgomery, do you know whether representations of that nature were at one time the subject of inquiry by the Federal Trade Commission to determine whether they were correct and fair representations? Do you know that, of your own knowledge?

Mr. Tincher: Mr. Examiner, I object to that. I further raise—

V. L. Montgomery—Direct

Hearing Examiner Haycraft: I don't see anything to be gained by that question.

Mr. Royall: May I state the purpose of it?

Hearing Examiner Haycraft: Yes. I would like to have it.

Mr. Royall: My purpose, your Honor, is to show—and we are going to offer certain records of the Commission to show—that statements of substantially the same character were investigated by the Commission and after the investigation was completed the matter was closed.

Hearing Examiner Haycraft: So what? What has that to do with this proceeding?

Mr. Royall: Well, sir, I reckon I will just give

(Tr. p. 3941)

away my hand.

Hearing Examiner Haycraft: Yes. I can't see the relevancy of it.

Mr. Royall: The relevancy is this, your Honor: This is a representation of added quality of Clorox which only Procter and Gamble is authorized to make, and the Commission, on investigating that in 1950, acted as the letters, which I will offer in a few minutes, will disclose.

Hearing Examiner Haycraft: What has that to do with the violations of Section 7 of the Clayton Act in the acquisition of the Clorox Chemical Company by Procter and Gamble? Suppose Clorox Chemical Company did make such a representation, and assuming it is true.

Mr. Royall: If it is true, it is a better product.

Hearing Examiner Haycraft: A better product than its competitors?

Mr. Royall: That's right.

Hearing Examiner Haycraft: That would be all the more reason why Procter and Gamble would want it. Still we don't know why.

V. L. Montgomery—Direct

Mr. Royall: That was true before. We are contrasting before and after.

Hearing Examiner Haycraft: It still is, I suppose. I don't suppose you have deteriorated it. I don't see what value that can have, what probative value it can have in

(Tr. p. 3942)

this proceeding.

Mr. Royall: You don't think it makes any difference whether it is a better product?

Hearing Examiner Haycraft: No. It is a good product.

Mr. Royall: Can we stipulate in the record that it is a better product?

Hearing Examiner Haycraft: No, but you can frame an offer of proof, if you want to.

I will sustain the objection to that line of questioning.

* * * * *

Mr. Royall: Your Honor, I don't want to prolong any argument. I would like to say that this evidence of superior quality also ties in with the price situation.

Your Honor, I would like to make an offer of proof.

Hearing Examiner Haycraft: All right.

Mr. Royall: The question asked the witness will be this: Does the Clorox bleach have a quality superior to other bleaches in the matter of germicidal efficiency?

Mr. Tincher: Do you want to hear my objection to that?

(Tr. p. 3943)

Hearing Examiner Haycraft: You have already objected and I sustained your objection.

This is an offer of proof.

Mr. Royall: If the witness were permitted to testify he would say it does by reason of the lower amount of free caustic.

V. L. Montgomery—Direct

The second question is: Were the representations identical in substance with those in Commission's Exhibit 372, 423, and 424 challenged by the Commission in 1950 and the investigation dropped in 1951?

Hearing Examiner Haycraft: He objected to that and I sustained the objection.

Mr. Royall: The witness, if permitted to answer, would state that that is correct.

The next question of the witness would be, is Clorox bleach manufactured at this time in the same way as it was in 1949 and 1950, and since that date, particularly with reference to its germicidal efficiency.

Hearing Examiner Haycraft: The same objection, and that objection would be sustained.

Mr. Royall: The witness, if permitted to answer, would say Yes.

Mr. Tinch: May I ask for my own information, sir, at this point and throughout the hearings, if you accept proffers of cross-examination? Some do and some don't.

(Tr. p. 3944)

Mr. Royall: Your Honor specifically ruled that you wouldn't accept it from us in any part of our case.

Hearing Examiner Haycraft: I haven't been following that strictly.

Mr. Royall: Your Honor, in view of your rulings in this matter, we will dispense with an additional witness on this same subject.

By Mr. Royall:

Q. Mr. Montgomery, do you know who makes the caustic soda and chlorine used in liquid bleach? What sort of companies? A. Yes, I do.

V. L. Montgomery—Direct

Q. Can you name a few of them? Not all of them, just a few of them.

* * * * *

A. Hooker Chemical—

Hearing Examiner Haycraft: It all goes to the availability of competitors in this area, in this field.

Mr. Tincher: To save time, we are happy to stipulate that there is no shortage of materials necessary for making liquid bleach.

Hearing Examiner Haycraft: How do we know; how does he know?

Mr. Royall: If you want to stipulate—

(Tr. p. 3945)

Hearing Examiner Haycraft: Go ahead. You can bring out the facts.

Mr. Tincher: I am just trying to save time.

(Tr. p. 3946)

By Mr. Royall:

Q. You started to name some companies? A. I will start from the west coast and work eastward.

Hooker Chemical, Dow Chemical, Stauffer;—

Hearing Examiner Haycraft: If there is any probative value to it, do you know where they are located?

The Witness: I don't know that I can recall the exact location where each company has all of its plants. I believe that I can come quite close.

Hooker Chemical Company has a plant in Tacoma, Washington and one in Midland, Michigan.

Let's put it this way. They have one in Michigan.

Stauffer Chemical Company has one in Henderson, Nevada.

V. L. Montgomery—Direct

Dow Chemical has one at I believe it is Pittsburg, California.

Frontier Chemical has one plant at Wichita, Kansas.

Diamond Alkali has a plant at Pasadena, Texas, Painesville, Ohio, and they I believe are operating the old Muscle Shoals plant, and I believe that is in Tennessee. I am not sure.

Wyandotte Chemical has a plant in Wyandotte, Michigan. They are building a new plant—it may already be in operation—in Louisiana.

Solvay has plants in two or three spots in the East.

(Tr. p. 3947)

They have one in New York, they have one in Georgia that I can recall.

Mathieson—Olin Mathieson have two or three plants, one at Saltville; they have one at McIntosh, and I believe the state is Alabama, but I am not sure of that.

Columbia Southern is another big one—and all of these are large operators, large operations—

* * * * *

The Witness: Columbia Southern have plants—I know of one in Houston, Texas. The locations of their other plants slip my mind at the present.

Westvaco, which is part of Food Machinery, have a plant in I believe Charleston, South Carolina.

Pennsylvania Salt Company is another.

That names those which come to me at the moment, and I think that is the major portion of them.

By Mr. Royall:

Q. Are the raw materials I referred to, caustic soda and cholorine, readily available to purchasers? A. They are.

V. L. Montgomery—Direct

Q. Do a certain number of the makers of caustic soda and

(Tr. p. 3948)

cholerine publish or distribute any pamphlets or booklets concerning the method of making bleach? A. They do, yes.

* * * * *

Q. Do all the plants you mentioned manufacture cholerine and caustic soda? A. They manufacture both of the products, caustic and cholerine.

* * * * *

(Tr. p. 3956)

Q. Will you describe the type of plant that is used by the Clorox Company?

Hearing Examiner Haycraft: What do you mean by "type"?

Mr. Royall: Just a rough description of the building. That is all I am asking for.

Hearing Examiner Haycraft: Go ahead. Answer, if you can.

The Witness: I am thinking of it in terms of a

(Tr. p. 3957)

warehouse-type of building, a multi-purpose building where we have a small office, a processing portion, a bottling portion, where we have our bottling line, and the balance of the building being used for warehousing of the produced stock.

Does that answer it?

By Mr. Royall:

Q. Of course you are familiar with the machinery and type of operation they have? A. Yes, I am.

V. L. Montgomery—Direct

Q. That is one of your principal responsibilities, is it not? A. It is.

Q. Mr. Montgomery, have you, incidentally, had an opportunity to see any of the Procter and Gamble soap and detergent plants? A. Yes, I have.

Q. Which ones have you seen? Give us a couple of them. A. I have seen the one at Quincy, Massachusetts; and I have seen the one in Kansas City, Kansas.

Q. Could the machinery and equipment used in manufacturing soap and detergents be used to make liquid bleach? A. I do not believe they could.

Q. What are the principal reasons why they could not?

A. There is one principal reason why they could not, and

(Tr. p. 3958)

that is that in the manufacturing of sodium hypochlorite solution we need our equipment, tanks in particular, and certain portions of our filling lines, protected with plastic or with rubber. That is not necessary—that is what we have in our plants. I have never seen anything like that in the soap plants.

Q. You have given some testimony about the cost of a small plant. A. May I correct that?

Q. Yes, sir. A. When I was talking about the cost of a small plant, when I was referring to a few hundred dollars, I was specifically thinking of equipment. I was not thinking of a building.

Q. I see. All right, sir.

As to the building, considering the smallest type of bleach plant, what sort of building could be used for it?

A. I don't mean to sound facetious, but you can do it in a garage.

* * * * *

V. L. Montgomery—Direct

(Tr. p. 3960)

* * * * *

Q. What experience, if any, have you had that would familiarize you with the cost of constructing a plant and equipping it? Give us what experience you have had. A. The first experience that I have had with this company—and that experience was as a division production manager—was to supervise the construction of a plant in Kansas City, Missouri.

Hearing Examiner Haycraft: When?

The Witness: About, approximately eight or nine years ago. It was the year of the big flood in Kansas City.

Hearing Examiner Haycraft: That isn't enough. I want to advise you this, so we will save some time: If you think that is an issue in this case and you are putting that up as a defense, the availability of plants and buildings, the cost at which they can be built, and raw material, I

(Tr. p. 3961)

think it has limited value but I think you are entitled to it, but you must do it by the best evidence, and that is the man who built it.

A man could go out here and engage in the building or installation of such a thing, primarily a man who manufactured it and has it for sale. If you want to prove that, that is the way to do it. You are not going to take this witness who hasn't had any experience in that in the last year or two. There is raw material and the value of many things.

If you want to make a contention to this Federal Trade Commission that anybody can go out here and build a plant to compete with Clorox successfully, you are going to have to have the best evidence. I am not going to deprive

V. L. Montgomery—Direct

you of proving it but I am going to deprive you of proving that testimony with this type of witness.

By Mr. Royall:

Q. After that one in Kansas City, what other experience

(Tr. p. 3962)

have you had? A. I would rather answer it in this manner: My responsibility now is this, and I must qualify it to the extent that I am not a construction engineer, but the engineering and designing and building of our plants the last two or three years have been under my supervision.

Q. Which plants have been constructed which would familiarize you with the cost? A. The last one was Boston, Massachusetts.

Q. Were there any in between? A. We have studied construction costs for other plants. As a matter of fact—

Q. The one in Boston was built when? A. It was put into operation in 1956.

Q. Are you familiar with the building costs in general of that type of plant between 1956 and the present time?

A. I—

Q. Do you know approximately the increase in cost, if any? A. Approximately. But I am no authority on this. I take my figures from the American Appraisal Information that I get.

Q. Do you know from your own knowledge what the actual cost was in the Boston plant? A. I do know.

Q. In 1956?

(Tr. p. 3963)

A. I do know this.

V. L. Montgomery—Direct

Q. Have you an opinion satisfactory to yourself as to what the cost would be of constructing and equipping a plant, we will say, capable of producing 250,000 cases of bleach per year?

Mr. Tincher: Mr. Examiner, this witness—

Mr. Royall: I am trying to qualify him first.

Mr. Tincher: This witness couldn't give an opinion on that. All he could testify about is what the Boston plant cost in 1956. That is the only qualification he has shown on the record. We must remember that the Boston situation is confused because the plant, as the record shows, was subsequently shut down.

Mr. Royall: And subsequently re-opened.

Mr. Tincher: That is right.

Hearing Examiner Haycraft: I will sustain the objection.

Mr. Royall: Your Honor, may I tender the answer that he would give, that he would say that he did have an opinion satisfactory to himself?

Hearing Examiner Haycraft: Yes.

Mr. Royall: The next question I would ask him, your Honor, would be: What would be the approximate cost of a plant producing 250,000 cases of liquid bleach per year? Your Honor would sustain that?

(Tr. p. 3964)

Mr. Tincher: I object.

Hearing Examiner Haycraft: At what time?

Mr. Royall: At the present time.

Hearing Examiner Haycraft: Yes.

Mr. Royall: If permitted to answer, I tender, your Honor, he would say about \$120,000 if you bought the land and constructed the building.

V. L. Montgomery—Direct

The next question would be, what would such a plant cost if the building were leased. Your Honor would sustain that?

Hearing Examiner Haycraft: Yes. And we will assume the question was asked, that an objection was made, and the objection sustained.

Mr. Royall: The witness would testify, if permitted to answer, that the cost would be about \$60,000.

And the next question would be, and this is the last one in this line, if such a plant had an added capacity of 150,000 cases—that is, totalling 400,000 cases per year, how much additional cost would be required.

Hearing Examiner Haycraft: I will assume the same objection.

Mr. Tincher: Yes, sir.

Hearing Examiner Haycraft: Same ruling.

Mr. Royall: The witness, if permitted to answer, would say approximately \$5,000.

* * * * *

(Tr. p. 3971)

* * * * *

CROSS-EXAMINATION

* * * * *

(Tr. p. 3976)

* * * * *

By Mr. Tincher:

* * * * *

(Tr. p. 3978)

* * * * *

Q. The Clorox Chemical Company has and has had research done for it by the Stanford Research Institute, has it not? A. Yes, it has.

V. L. Montgomery—Cross

Q. And the same for the Clorox Company? A. The same as the—

Q. I say, the same for the Clorox Company? A. Yes, that is my understanding.

Q. And the Clorox Company has had research done for it by the Procter and Gamble Company in Cincinnati, has it not?

* * * * *

(Tr. p. 3979)

* * * * *

A. To my knowledge, Procter and Gamble Laboratories have not done any research work on liquid sodium hypochlorite solutions.

* * * * *

Q. How many chemists does the Clorox Company have working for it? A. Would you accept an estimate? It is around 25 or 30. In that magnitude.

Q. Do you have a chemist at each of your production facilities? A. Yes.

Q. At least one?

(Tr. p. 3980)

A. At least one.

* * * * *

(Tr. p. 3985)

* * * * *

Q. A sodium hypochlorite liquid bleach has to be made exactly right or it can ruin the clothes in the washing process, can it not? A. You would have to define "exactly right" to me. You would have to qualify that question as to what is "exactly right." I couldn't answer that.

Q. Let's take Clorox. It is a 5.25 sodium hypochlorite solution. A. It is.

V. L. Montgomery—Cross

Q. And that has to be a uniform percentage, does it not, from your company's viewpoint? A. Our label strength guarantees or refers to the label strength as a minimum of $5\frac{1}{4}$ percent sodium hypochlorite

(Tr. p. 3986)

and we make every attempt to adhere to that standard.

Q. How do you achieve such a standard? A. By very close controls.

Hearing Examiner Haycraft: What are those controls?

The Witness: Through chemical analysis, first by measuring the material that is to be used, specifically sodium hypochlorite and the water, preparing an alkaline solution of pre-determined strength. We then introduce chlorine into this alkaline solution, and through chemical analysis made at various times during the chlorinization process, we determine the extent of the chlorinization. We determine the presence of certain caustic and alkaline salts. And when we have chlorinated to what we will refer to as the batch, when we have processed or chlorinated the batch to where there is no free caustic and where we have diluted it with water to properly prepare for the—rather, to obtain the proper sodium hypochlorite concentration, we then call it a finished batch.

Hearing Examiner Haycraft: Do you do that to every batch, or spot check?

The Witness: We do that to every batch. To every batch.

(Tr. p. 3987)

Hearing Examiner Haycraft: If you get too strong a solution of free alkali in there, will that cause an injury to fabric?

V. L. Montgomery—Cross

The Witness: In my opinion, the greater amount of caustic in the solution, the more injurious that it will be to fabrics.

* * * * *

(Tr. p. 3991)

* * * * *

Q. What are the duties of a chemist at your production facilities?

(Tr. p. 3992)

A. The duties of a chemist at one of our production units is primarily to be responsible for the operations of the process operators and of the manufacture of Clorox, of the sodium hypochlorite solution, among other duties such as helping the plant manager supervise the plant.

Q. Is one of those duties the overseeing of the quality controls to make certain it is uniform? A. That is correct.

Q. Does the Clorox Company buy concentrate and cut it to make liquid bleach? A. We do not.

Q. Did the Clorox Chemical Company? A. They did not.

* * * * *

(Tr. p. 3993)

* * * * *

Q. In other words, the cost of production of a large company, such as Clorox, is much less than the cost of production of a small company? A. I couldn't say that. I don't know anything about the cost of other companies, operating costs. I don't know.

* * * * *

(Tr. p. 3999)

V. L. Montgomery—Cross

Q. I want to be sure I understand this Boston situation. When was that plant completed? A. I am not sure of this, but I believe it was in the early part of 1956. It was in 1956, I believe.

Q. Then, it was placed into operation; when did it cease producing liquid bleach? A. Sometime in 1957.

Q. Is it producing liquid bleach today? A. Yes, it is.

Q. When did the production commence again? A. About July of this year.

Q. Between June 30, 1955 and June 30, 1956, were any other plants built for the production of Clorox?

* * * * *

A. I will have to answer to this extent: We built—I will answer your question by saying Yes.

By Mr. Tincher:

Q. The Cleveland Branch? A. That was Cleveland. And that was a replacement of an old plant.

Q. Outside of the Cleveland plant and the Boston plant, were any plants built, completed, between June 30, 1955 and

(Tr. p. 4000)

June 30, 1956? A. I do not believe so. I would have to have the record to look at. I don't believe so.

* * * * *

Q. In that period of time, were any additions made to existing plants?

* * * * *

A. Any additions? You are referring to plant capacities, physical capacities, that sort of thing?

By Mr. Tincher:

Q. Additions in any way. Anything that would be car-

V. L. Montgomery—Cross

ried on the books of the Company as plants, property, equipment.

* * * * *

A. Without referring to the record, I believe I would be correct in stating that we did make certain capital expenditures which would improve our equipment or enlarge upon our capacities. It is conceivable that we did so. But I can

(Tr. p. 4001)

not give you a specific yes or no.

* * * * *

(Tr. p. 4003)

* * * * *

Q. The manufacture of liquid bleach, once you get past the point of preparing the solution, is basically a bottling process, is it not? A. After you get by the basic solution?

(Tr. p. 4004)

Q. Yes.

* * * * *

A. After the solution has been processed, your Honor, it is necessary to allow it to clarify.

Hearing Examiner Haycraft: Clarify?

The Witness: To clarify, yes. After that, it is a bottling process.

By Mr. Tincher:

Q. And the bottling process can be done on liquid detergent bottling machines as well as on those used for liquid bleaches, can it not? A. No, it can not.

Q. What is the reason for that, sir? A. Differences in types of material and construction necessary and the difference in the types of filling.

* * * * *

V. L. Montgomery—Redirect

(Tr. p. 4006)

* * * * *

REDIRECT EXAMINATION

By Mr. Royall:

* * * * *

(Tr. p. 4007)

* * * * *

Q. One other thing. Mr. Tincher asked you about the use of plant chemists in testing your products. Did that test include a test as to free caustic which is related to germicidal effect? A. Those tests included that.

Q. Notwithstanding the expiration of your patent some years ago, do you still manufacture bleach and test bleach in the manner you described in your testimony this morning? A. You are correct in that.

Q. Has there been any change? A. There has been no change.

* * * * *

(Tr. p. 4012)

* * * * *

M. A. Leazar

was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Hearing Examiner Haycraft: State your full name and address.

The Witness: My name is M. A. Leazar—L-e-a-z-a-r—3022 East Houseton Street, San Antonio, Texas.

By Mr. Royall:

Q. Mr. Leazar, what is your occupation? A. I am

M. A. Leazar—Direct

Vice President and Purchasing Director of the Handy-Andy Super Markets, San Antonio, Texas.

Q. How many Super Market do you operate? A. A total of 24.

Q. Are they all in Texas? A. Yes, sir.

Q. Is it a closely held corporation? A. Very closely held, yes, sir.

Q. How long have you been with that Company? A. Slightly over 26 years.

Q. What are your present duties as president and purchasing agent? A. Correction, sir. Vice President.

(Tr. p. 4012-A)

Q. What are your duties as Vice President and Purchasing Agent? A. I, of course, perform the average duties of an officer of the Company, and in addition to that, as Purchasing Director, I have full charge of the items that are procured for the Company in all divisions as to quality and quantity.

Q. What responsibility do you have to the actual operation of the Super markets themselves? A. Well, my job, of course has to do with the maximization of profits for the Company, obviously, and watch turn-over and procurement.

Q. Procurement? A. Yes, sir.

Q. That would include the purchase of liquid bleach, among other things, would it? A. It would; yes, sir.

* * * * *

(Tr. p. 4028)

* * * * *

Q. Since the acquisition of Clorox by Procter and Gamble, has there been any change in the amount or propor-

M. A. Leazar—Direct

tion of shelf space allocated to Clorox bleach? A. No, sir.

Q. What is your general policy in the allocation of shelf space, and how does that policy apply as between larger volume and lower volume companies? A. The normal policy, or the policy—let me rephrase that—is to permit the store manager at individual level stores to go ahead and make his own facings based upon customer preference by brands. That is the normal procedure. And of course in so doing we obviously can't cut it down less than one or two spaces because it will be lost in the shuffle, so to speak, if I might use that word loosely. So in most instances, I feel that the lesser sellers possibly get more shelf space than possibly the number one.

(Tr. p. 4029)

Q. You mean more in proportion to the volume? A. That is right. More in proportion to what their volume would indicate, yes, sir.

* * * * *

Hearing Examiner Haycraft: How is the store manager to determine the customer preference?

The Witness: Well, actually it is determined by movement, your Honor.

Hearing Examiner Haycraft: Turn-over movement?

The Witness: Yes, sir, that is right.

By Mr. Royall:

Q. I assume that Handy-Andy Supermarket sells products manufactured by Procter and Gamble themselves?

A. Yes, sir, that is right.

Q. Do you carry all their products? A. All that they manufacture? No, not all of them.

* * * * *

M. A. Leazar—Direct.

(Tr. p. 4030)

* * * * *

Q. Does the fact that you sell other Procter and Gamble products and that Procter and Gamble owns the Clorox Company have any effect on the amount of shelf space assigned to Clorox bleach? A. It would have no effect on it, no, sir.

* * * * *

Q. Where are liquid bleaches generally found in your supermarkets? A. Generally with the starches and the general cleansing items. Exclusive in many instances of the mops and pails. The modern stores don't build their fixtures the way they used to.

Q. How are they located in your normal operations as to where soaps and detergents are located? A. They may be located adjacent to the soaps and detergents. We do not permit the putting of those—intermingling of those, I should say.

(Tr. p. 4031)

Q. Does the fact that Procter and Gamble owns Clorox in any way force you—and I use that word in quotation marks—to buy more Clorox in order to obtain Procter and Gamble products? A. That question, within the scope of it, just seems to be asinine to me because we run our own business. And no one has ever, and I hope will never, force us to buy anything we don't need. I would definitely say that that is an impossibility.

Q. Has Procter and Gamble ever tried to force you to buy Clorox? A. No, sir.

Q. From whom do you buy your Clorox? A. It is purchased through a brokerage firm.

Q. John Mangum? A. That is correct.

Q. Has there been any change since the acquisition in his methods or activities? A. None whatsoever.

M. A. Leazar—Direct

Q. So far as your operations are concerned, is there any difference to you and your operations whether goods are sold you by distributors or by direct salesmen of the manufacturing company? A. No, sir. It would make no difference to us where we procured them.

* * * * *

(Tr. p. 4034)

* * * * *

Room 332
Federal Trade Commission
Washington, D. C.

Tuesday, 18 November 1958

Met, pursuant to adjournment, at 9:30 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 4035)

PROCEEDINGS

* * * * *

M. A. Leazar

resumed the stand as a witness for the Respondent and, having been previously duly sworn, testified further as follows:

DIRECT EXAMINATION (resumed)

* * * * *

(Tr. p. 4049)

* * * * *

Mr. Tincher:

* * * * *

(Tr. p. 4050)

* * * * *

M. A. Leazar—Direct

But the question is—and there is no allegation in the complaint that Procter and Gamble gets more shelf space than their share of the market—the question is the ability of the small producers to obtain any shelf space, and if so, how much?

(Tr. p. 4062)

By Mr. Royall:

Q. Can you tell us the prices at which Purex and Clorox sell in your stores? Maybe you have to have a memorandum on that. I don't know. You have so many figures in mind. A. We have about six—

Q. Give it to us in quarts and gallons, if you can remember? A. Nineteen and fifty-nine.

Q. Nineteen cents a quart and 59 cents a gallon? A. Yes, sir.

Q. Are the prices the same in Purex and Clorox? A. Yes, sir.

Q. Fleecy White sells in quarts and gallons. What are their prices? A. Seventeen and 53, is my recollection.

(Tr. p. 4063)

Hearing Examiner Haycraft: That difference in price, is that because Fleecy White is not an advertised product, not nationally advertised?

The Witness: Well, not necessarily, sir. We base our retails on our cost.

Hearing Examiner Haycraft: You also base it on public demand?

The Witness: On what?

M. A. Leazar—Cross

Hearing Examiner Haycraft: On the demand for the product.

The Witness: We like to take an average mark-up categorically based on cost, rather than, if I might use the

(Tr. p. 4064)

phraseology, of "all the traffic will bear." We do not adhere to that policy. We do not think that is good business.

Hearing Examiner Haycraft: So you buy that cheaper?

The Witness: Yes, sir. It comes to us cheaper, therefore, we sell it cheaper. The mark-up factor is for all practical purposes the same on all lines.

* * * * *

CROSS-EXAMINATION

By Mr. Tincher:

* * * * *

(Tr. p. 4069)

* * * * *

Q. You testified yesterday that there were some Procter and Gamble brands—and I refer to Procter and Gamble—there were some P&G brands you do not carry; is that correct? A. That is correct.

Q. What are those brands? A. We do not carry the P&G laundry soap. Are you speaking of the present tense?

Q. Yes. A. We do not carry that. We do not carry Duz. There are some items in Camay toilet in colors, specific colors now, that we do not carry. And there are some sizes that Procter and Gamble make and sell of other items which we do not stock. In other words, there might

M. A. Leazar—Cross

be four sizes of one particular brand of goods and we might stock three or perhaps two of them.

* * * * *

(Tr. p. 4071)

* * * * *

Q. How about liquid bleaches? You don't have any private brands?

(Tr. p. 4072)

A. No, sir.

Q. I believe you testified yesterday that shelf space is determined by turnover which in turn is determined by consumer preference; is that right? A. With this proviso, sir: That originally that shelf space is determined by the manager. I wish to make that point.

Q. At some starting point? There has to be a starting point. Is that what you mean? A. That is correct.

Q. And he will fluctuate with that as his experience proves the product sells or doesn't sell? A. That is correct. That is our policy.

Q. What factors determine the customer preference as to whether the products do sell or do not sell in your store? A. Actual movement off of the shelf would be that indicator.

Q. That is the indicator? That is the result? A. That's right.

Q. What determines whether that result is going to come about or not? A. Well, of course, all my facts and figures are actually based upon actual movements or actual things that happen, not on what may cause the item to move. And certainly consumer acceptance is the prime objective to movement: That is why we stock and buy items.

Hearing Examiner Haycraft: What he wants to know is

M. A. Leazar—Cross

(Tr. p. 4073)

how is that consumer acceptance obtained?

The Witness: Through many, many methods, your Honor.

Hearing Examiner Haycraft: That is what he wants.

The Witness: They are very voluminous.

Hearing Examiner Haycraft: That is what he wants you to tell him.

The Witness: It can be done by consistent advertising, radio, television. You name it. They could have many other gimmicks that are paramount to the super market industry, not particularly as to bleach or soaps. There are just any number of items that would cause a product to move.

By Mr. Tincher:

Q. Among those things would be such things as coupons? A. Yes, coupons are used for promotional purposes. If I might inject my individual thoughts, however, I personally don't feel the manufacturer is doing too well with coupons.

* * * * *

(Tr. p. 4081)

By Mr. Tincher:

Q. Yesterday you testified that P&G had not tried to force you, and counsel asked the question with the words, as he told you, "force" in quotes. Just what did you mean when you answered that, that they hadn't tried to "force" you? A. Force to do what?

Q. To buy Procter and Gamble products if you wanted Clorox, or the contrary also. A. I interpreted the question to mean that if we wanted to purchase soap products from Procter and Gamble we would have to buy Clorox.

M. A. Leazar—Cross

And by that interpretation I would mean perhaps all sizes or something like that. We definitely are not being forced to buy anything we don't want.

Q. The matter of forcing in grocery merchandise by all suppliers is over, is it not? A. It is as far as our firm is concerned.

Q. And Procter and Gamble and General Foods or nobody else can force you to buy anything, can they? A. No, sir, I don't think they could.

Q. As a matter of fact also, the Procter and Gamble Company and its salesmen and representatives have never even tried to sell you any Clorox, have they? A. Procter and Gamble, no. They don't market it. It is marketed under a—

Q. I realize that. But, independent of how it is marketed,

(Tr. p. 4082)

no Procter and Gamble salesman or division manager or superior in any way has talked to you about Clorox or tried to get you to buy Clorox? A. No, sir.

Q. And those same salesmen and persons do sell you the Procter and Gamble products? A. Yes.

(Tr. p. 4088)

Q. And the reason that you happen to be advertising that product is because of the cooperative advertising allowance from Procter and Gamble; is that correct?

A. No, sir. If I made that statement I did not intend to. I don't think I did, incidentally. No, definitely not. As I stated, we do not write our ads based upon cooperative

M. A. Leazar—Cross

advertising. We feel that those types of ads are not good ads in our terminology. We must have a cross-advertising

(Tr. p. 4089)

of all items, in those brands and sizes and what have you that will produce traffic for us. If we get paid for an individual segment of it by reason of cooperative contracts, fine. If we don't, the ad still stands as originally written. I don't know whether I made myself clear on that. Definitely we do not advertise an individual item just because we have a cooperative contract. There are instances of course where that will happen, but deliberately we do not advertise because of a contract.

* * * * *

(Tr. p. 4092)

* * * * *

Q. You testified yesterday, sir, that you never mix in displaying, you never mix liquid bleach and soap, detergents

(Tr. p. 4093)

and cleansers, is that right? A. As to having a bleach next to a soap or an individual product, no. Where they cut off and end there might be an end of the bleach section and starches and soaps would start thereafter. But "intermingled" I think was the terminology.

Q. Yes. Why is it you don't intermingle? A. We think that the products are entirely different. That is my individual thought on the thing. I don't see that the bleach and soap is related in the end result of the two products. In other words, if you need soap you need soap. If you need bleach it is bleach. I don't think there is that close a relationship in stacking them together.

M. A. Leazar—Cross

Q. You will buy them both. You won't buy bleach in place of detergent. A. That is right. You buy what you went in there to buy.

Q. As a matter of fact, even within the soap-detergent-cleanser section you don't intermingle heavy-duty and light-duty and liquids and solids, do you, or granulars? You have separate sections for each, don't you? A. That is a debatable question, sir, and it hasn't been proved to our satisfaction one way or another. There have been attempts to segregate heavy-duty, light-duty, and what have you. We have never adopted a particular style because the results one way or another have not shown us anything.

Q. What do you do? That is what I am interested in.

(Tr. p. 4094)

A. They are stocked and positioned shelf-wise according to the individual manager's own selection as to how he feels possibly they should be grouped, plus a customer inquiry that she won't find an item. Then perhaps we might think she is looking at an individual item in a given place and move it, possibly.

(Tr. p. 4098)

Q. What do you pay for Purex and Clorox and Fleecy White? A. I will have to refer to my records on that, sir. I do not know.

The Witness: Of course, Clorox and Purex are the same price. I will quote them as one. 24 pints cost \$2.26 per case; 12 quarts, \$1.91 per case; 6 half gallons, \$1.86 per case; 4 one gallons, \$1.98 per case. That is the list price of both Purex and Clorox.

M. A. Leazar—Cross

By Mr. Tinch:

Q. Is there any discount? A. There is a quantity discount of two percent.

Q. Is there an additional two percent discount for cash payment? A. Two percent on Clorox and two percent on Purex.

Q. Now, will you give us the Fleecy White prices?
A. Quarts of Fleecy White, 12 quarts that is, \$1.71 per

(Tr. p. 4099)

case. And four one gallons, \$1.68.

Q. What discount structures are in those prices? A. Two percent cash.

Q. Any quantity discounts? A. No, sir. I do not see them listed on the invoice. If there is, there are none shown. No, there are none shown.

Q. No discounts at all, period? A. No.

(Tr. p. 4113)

Arnold L. Royer

was called as a witness on behalf of the Respondent and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Hearing Examiner Haycraft: What is your full name and address?

The Witness: Arnold L. Royer.

By Mr. Larsen:

Q. What is your occupation, Mr. Royer? A. The Manager of General Advertising, Cleveland Press.

Arnold L. Royer—Direct

Q. What do those duties as Manager of General Advertising entail? A. Supervision and operation of our sales activities in the general advertising field.

Q. As an adjunct of that supervision, sir, do you have any connection with the Cleveland Press Consumer Panel? A. Yes.

Q. What is your connection with that Panel? A. Well, the Cleveland Consumer Panel is sponsored by the Cleveland Press and by my department at the Cleveland Press.

(Tr. p. 4114)

Q. Would you describe generally the nature of the Panel, what its purpose is, those facts? A. The purpose of the Panel is to reflect consumer buying habits of branded merchandise within the market.

* * * * *

Q. I believe you said, Mr. Royer, that the purpose for the Cleveland Consumer Panel was to reflect consumer buying habits and was a service to your advertisers?

A. Right. It is a service to manufacturers of branded goods, either who are our advertisers or who are potential advertisers. It is also a means of securing brand movement information which we are interested in securing ourselves.

Q. To whom are the results of the survey distributed? A. Largely to manufacturers, advertising agencies representing manufacturers.

* * * * *

(Tr. p. 4115)

* * * * *

Q. Speaking of cost, is this undertaking which you have in the Cleveland Consumer Press an expensive process for

Arnold L. Royer—Direct

you? A. Yes. The conduct of this study costs us about \$50,000 a year. It means an expenditure over a period of the last ten years of about a half a million dollars.

Q. How long have you been carrying on this type of service? A. The Panel is over ten years old at the present time. Since 1947.

* * * * *

(Tr. p. 4121)

* * * * *

Q. Mr. Royer, I now show you Respondent's Exhibit 63 for identification, and ask you to tell me what it is? A. It is the Cleveland Press Consumer Panel report, quarterly report.

(Tr. p. 4122)

Q. For what period? A. July, August, and September, 1957.

Q. I now show you page 49 of that report. To what commodity does this page refer? A. It has to do with liquid bleach.

Q. What report period does this cover? I am referring now to page 49. A. July, August, and September, 1957.

* * * * *

Q. Does the record show what method of distribution, or through what channel of distribution the merchandise was

(Tr. p. 4123)

purchased? A. Yes. The respondents in the Panel are asked to list the place where this product was obtained, either in a store or however it might be.

* * * * *

Q. Mr. Royer, in your opinion, does page 49 of Respondent's Exhibit 63 accurately reflect the bleach pur-

Arnold L. Royer—Direct

chases in the July-August-September period in Cleveland, and the channels of distribution through which they were purchased.

Mr. Tincher: I object to that. This witness hasn't been shown to be the least qualified to testify about bleach purchases in Cleveland or any place else.

* * * * *

(Tr. p. 4125)

Hearing Examiner Haycraft: Are you asking quantity?

Mr. Larsen: I am asking both share of market and distribution as reflected by the Cleveland Consumer Panel.

Hearing Examiner Haycraft: There is a difference there.

I will have to voir dire a little myself.

In preparing this exhibit is it your purpose to advise your clientele, your customers, the exact volume or the volume of business done, or the share of the market or the trend of the market?

The Witness: All three of those elements would be contained in our study, either in a given report or over a period of a number of reports.

Hearing Examiner Haycraft: In other words, it is your contention that those figures are projectable?

The Witness: Yes.

Hearing Examiner Haycraft: That by making this sample of the 500 families as you made them, that you feel that the total figures that you get can be projected to give the total actual purchases in that area?

The Witness: Within a reasonable degree of research error.

Hearing Examiner Haycraft: It also gives you the trend and the share of the market?

The Witness: Yes.

Arnold L. Royer—Direct

(Tr. p. 4126)

* * * * *

Hearing Examiner Haycraft: The entire line of testimony is very good. In my judgment he has laid a very proper foundation for his final question.

Mr. Tincher: Yes, sir. My contention is that you can't get opinions from witnesses unless you establish them as an expert.

Hearing Examiner Haycraft: This witness is an expert. That is his business.

Mr. Tincher: It hasn't been shown that he is a statistician.

Hearing Examiner Haycraft: To my satisfaction it has.

* * * * *

(Tr. p. 4128)

* * * * *

Mr. Larsen:

* * * * *

I would also like marked for identification the Cleveland Press, Cleveland Consumer Panel for April-May-June 1958, as Respondent's Exhibit 64.

(The document referred to was marked Respondent's Exhibit 64, for identification.)

By Mr. Larsen:

Q. Mr. Royer, what is Respondent's Exhibit 64, to make it very brief? A. This is the Cleveland Consumer Panel quarterly report for April-May-June 1958.

Q. What is the latest report, published report which you have from the Cleveland Consumer Panel? A. That is it right there.

* * * * *

(Tr. p. 4131)

* * * * *

Arnold L. Royer—Voir Dire Examination

Mr. Larsen: Your Honor, this might shorten this particular cross-examination; I don't know. On the exhibits we offered before the recess, RX-63 and 64, I want to point out that we are not offering those in any way to vary at all from the Nielsen figures, which were stipulated at the Chicago hearing. In fact, none of the figures which we will offer during our defense or at any time are for the purpose of contradicting any of the Nielsen figures, either nationally or in any locality or any figures that have or may be offered.

Of course, these figures, the Cleveland Press Surveys, show channels of distribution, which is different information than that which can contained in Nielsen. We offer Respondent's Exhibits 63 and 64 for the sole purpose of showing those channels of distribution.

* * * * *

Hearing Examiner Haycraft: Are you referring now to the percentage figures at the bottom of the page?

(Tr. p. 4132)

Mr. Larsen: Yes, sir.

* * * * *

Hearing Examiner Haycraft: Do you want to cross-examine on the voir dire?

Mr. Tincher: Yes, sir.

VOIR DIRE EXAMINATION

By Mr. Tincher:

* * * * *

(Tr. p. 4138)

* * * * *

Mr. Tincher: Sir, I think on that basis alone there is no question about this witness being competent to offer these

Arnold L. Royer—Voir Dire Examination

documents as the exhibit itself states, which has been offered. I engage in the practice of not reading

(Tr. p. 4139)

in the record what the exhibit states, but I refer to your attention who conducts this survey. Coupled with the testimony of the witness; this witness simply is not qualified to offer this survey because he is not some one——

Hearing Examiner Haycraft:

• • • • •
(Tr. p. 4140)

Your objection is overruled on the exhibits and they are received in evidence.

(Whereupon, the documents referred to, heretofore marked Respondent's Exhibits 63, 64, and 65 for identification, were received in evidence.)

• • • • •
(Tr. p. 4191)

Room 332
Federal Trade Commission
Washington, D. C.

Wednesday, 19 November 1958

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

• • • • •
(Tr. p. 4192)

PROCEEDINGS

• • • • •

Bernard F. Trimpe—Direct

(Tr. p. 4200)

* * * * *

Bernard F. Trimpe

was called as a witness on behalf of the Respondent, The Procter & Gamble Company, and having been previously duly sworn, testified as follows:

DIRECT EXAMINATION

* * * * *

By Mr. Royall:

Q. Mr. Trimpe, I believe you have testified before in this case as a witness called by the complainant; is that right? A. That is correct.

Q. How many distributors does the Clorox Company have in the United States? A. Eighty-three.

Q. Will you give, briefly, the contact which you as the

(Tr. p. 4201)

head of the sales division have with your distributors? A. Well, I contact them personally, of course, and I have five division sales managers who are under my supervision, who in turn work very carefully with the distributors.

* * * * *

Q. They take the risk and the title, do they not? A. Yes, they take title.

Hearing Examiner Haycraft: When do they pay for it?

The Witness: We have a basis where we bill them after a two-week period and they pay us and they in turn bill the direct buyers who buy from them on approximately—

Hearing Examiner Haycraft: They don't wait until they sell it before they pay you? They pay you on your billing?

Bernard F. Trimpe—Direct

The Witness: That's right. On a periodic two-week basis.

* * * * *

(Tr. p. 4204)

* * * * *

Hearing Examiner Haycraft: You don't have to put every broker on. We can assume that they are a class, that brokers are all about the same.

* * * * *

(Tr. p. 4206)

* * * * *

By Mr. Royall:

Q. State whether or not you from time to time consult with the brokers and give them guidance and advice?

A. I travel extensively. This is my responsibility as Vice President of Sales. In traveling I go into their offices and discuss our business with them and consult with them in regard to our business in their territory.

Q. Do you give them suggestions and advice? A. Yes.

Q. Do each of these distributors have their own retail force? A. Yes.

Q. That is, retail sales force? A. Yes.

Q. Do you know what these salesmen do? A. Yes.

* * * * *

(Tr. p. 4207)

* * * * *

Q. Does Clorox Company have any direct salesmen? A. No.

Q. Is Clorox sold to the retail trade in any other way than by the salesmen of the distributors? A. No.

Bernard F. Trimpe—Direct

Q. Do you keep in touch with the method of sales used by the brokers? A. Yes, through my division sales managers and by my personal contacts.

Q. In the ordinary course of business, do you receive reports as to the activity of these salesmen? A. Yes. Each distributor reports to me on a weekly basis.

* * * * *

(Tr. p. 4211)

* * * * *

Q. Mr. Trimpe, do you travel with the salesmen from time to time? A. Yes, 50 percent of the time.

Q. Do you observe the activities that they undertake? A. Yes.

* * * * *

(Tr. p. 4216)

* * * * *

Q. Specifically, Mr. Trimpe, what do you do, what activities do you have in connection with these salesmen of the brokers? A. Well, I personally contact them.

Hearing Examiner Haycraft: How many are there?

The Witness: Counting wholesale salesmen and chain store salesmen there are around 749 to 750. That is the last figure I have in my mind as of about November 1st.

Hearing Examiner Haycraft: And you contacted all of them?

The Witness: You mean personally?

(Tr. p. 4217)

Hearing Examiner Haycraft: Yes.

The Witness: Well, I have worked in the past three years, off and on, with practically all of them in the sense of having meetings with them and travelling the trade with them as much as I could. Obviously I couldn't per-

Bernard F. Trimpe—Direct

sonally have worked with everyone of them, no. But I have made it a point, since I have just been with the company three years—a little over—not only to work with the wholesale chainmen in meetings as I said, but I have made it a point primarily to work with the retail salesmen in every territory in which I could.

Hearing Examiner Haycraft: Do you address those meetings?

The Witness: Yes.

Hearing Examiner Haycraft: And they sit out and listen to you? Is that what you mean by contacting them?

The Witness: I do that, and after the meeting is over, after we have talked over our problems, I get out and get in the car with them and ride in their territories, go into retail stores and point out what I believe are problems, if we have any, and try to talk to them about how we would like to correct them. I work with the retail men in every territory.

I make a particular point of working with retail men in every territory in which I travel.

(Tr. p. 4218)

Hearing Examiner Haycraft: And you travel all territories?

The Witness: In the last three and a half years, I have been in every territory except two.

Hearing Examiner Haycraft: That is over a three-year period of time.

The Witness: Yes.

Hearing Examiner Haycraft: How many times have you been in each territory?

The Witness: It is according to the size of the territory. With some territories I get in there three or four times a year. In others I have been only once.

Bernard F. Trimpe—Direct.

Hearing Examiner Haycraft: And some not at all?

The Witness: And two not at all. Then, of course, I have division sales managers with whom I—

Hearing Examiner Haycraft: How many individual salesmen do you accompany in retail trade on more than one call?

The Witness: Do you mean more than one day with him?

Hearing Examiner Haycraft: Yes.

The Witness: In general I would have ridden with a retail man only once. But as I said, in the larger territories, the more important territories to us volume-wise, and in the points closer to my home office, I have ridden two or

(Tr. p. 4219)

three times with the same man.

Hearing Examiner Haycraft: In San Francisco?

The Witness: Yes. But in general I have ridden at least once with practically all of our important distributors, with every man, and a couple or three times with some of the retail men in some of the territories.

* * * * *

(Tr. p. 4220)

By Mr. Royall:

Q. How much of your time do you stay in the field?

A. Well, I have testified that the first year with the Company I was in the field primarily all the time. I was only home a few weeks out of the year. And the next year I was able to get a division sales manager in the East, and then in the Chicago area, and now we have five division sales managers. So it relieves the burden of travelling. But I am in the field, I would say, 40 percent of the time to 50 percent of the time.

Bernard F. Trimpe—Direct

Q. As a regular part of your business, do you get reports from these sales managers in places where you have not yourself personally seen the salesmen?

(Tr. p. 4221)

A. Yes, each division sales manager reports to me on a weekly basis not only where he is going to be in the next week—

By Mr. Royall:

Q. Had you finished? A. No. The division men report where they are going to be, in which territory they are going to work, and in which territory they have worked, and they cover the details of the work during the past week.

(Tr. p. 4226)

Q. During the brief testimony on this case—and I don't believe there will be any dispute with the other counsel on this—it has been stated that at the time of the acquisition, Mr. Roth, Mr. Feigenbaum, and Mr. Wolford, had retired or ceased to take an active part in the operation. Were there other executives in the old Clorox in a similar situation?

Mr. Royall: I want the complete facts, your Honor.

A. Mr. Larry Barton, who is our Vice President of Production, and also was in charge of technical research for the Company, retired in 1956.

By Mr. Royall:

Q. He had reached the retirement age? A. Yes.

Q. Now, another subject.

Bernard F. Trimpe—Direct

Mr. Trimpe, do you know the number of bleach manufacturers in the United States? A. I know many of them personally, and through the normal course of my operation in my department, I have records which we have accumulated over many years and which we constantly check, which gives me, I think, knowledge of the bleach manufacturers of America.

Q. About how many are there, to your knowledge?

* * * * *

(Tr. p. 4227)

* * * * *

Hearing Examiner Haycraft: Is there any direct or recognized source of information?

The Witness: There is not an association of bleach manufacturers but we periodically send a sort of a letter to our distributors asking them—we have a master list, and we send that to our distributors asking them to correct it, alter it, add to it or change it so that we are aware of who the competitors are throughout the United States. By Mr. Royall:

Q. Is it necessary in the operation of your business to know the names of your competitors and their location? A. I believe it is.

Q. And as a part of your regular business, do you keep as up to date on that as you possibly can from your reports and from your observations? A. Yes. I have a girl who constantly works on that list as it is necessary to alter it or change it.

Q. Approximately how many are there of liquid bleach producers?

* * * * *

(Tr. p. 4228)

* * * * *

Bernard F. Trimpe—Direct

A. According to my records, which I have just brought up to date, there are over 240 bleach manufacturers in America.

By Mr. Royall:

Q. Have you prepared from your records and your personal knowledge a list of them in the United States? A. Yes, I have done that recently.

Mr. Royall: I would like to have this marked for identification as Respondent's Exhibit 67-A through -Q.

(The document referred to was marked Respondent's Exhibit 67-A through -Q, for identification.)

By Mr. Royall:

Q. Mr. Trimpe, I hand you Respondent's Exhibit 67-A through -Q for identification. Is that an accurate list of the liquid bleach manufacturers in the United States at least to the extent that each one of those is a manufacturer? A. Based on my personal knowledge and from my records, that is an accurate list.

Q. Are you familiar with the brands under which they are manufactured? A. Yes.

Q. Is that shown on the list? A. The bleach brand is shown on the list.

* * * * *

(Tr. p. 4230)

* * * * *

Q. And that is the time when the list was finally prepared? A. Yes.

Q. When was that? A. About two weeks ago. This is a little bit before November 1.

* * * * *

Bernard F. Trimpe—Direct

(Tr. p. 4238)

Q. Since 1952 has Clorox bleach been the largest selling bleach, household liquid bleach? A. Yes.

Q. In the country? A. Yes, sir.

(Tr. p. 4243)

Q. Mr. Trimpe, do some manufacturers manufacture liquid household bleach for distribution under private labels? A. Yes.

(Tr. p. 4246)

Q. Have you, through your distributors and your sales managers obtained labels which now appear on private label bleaches? A. Yes.

Mr. Royall: May this be marked for identification?

(The document referred to was marked Respondent's Exhibit 68, for identification.)

By Mr. Royall:

Q. I hand you what has been marked Respondent's Exhibit 68, consisting of 50 pages. Tell me what it is. A. This represents an attempt on my part to fully be aware of all the private labels in America. The best way I knew to do that was to, again, through my distributors and my division sales managers, ask them to not only give me a list of all the private labels in their territory, which I have compiled in total alphabetically and also broken down into separate lists by distributors so I will know how many were in each distributor's territory, and also by the manu-

Bernard F. Trimpe—Direct

facturer, where we could get that information, and also when the private label started in the territory.

(Tr. p. 4247)

In order to be able to study these private labels from my point of view not only as to what they look like but what they have on their recommendations in terms of caution and how to use the product, and so forth, we had sent in—we had them go out and buy a quart bottle, just one size, and send in to us the private labels throughout the United States, of which there are about 204, according to my records before I went on my trip two weeks ago.

Q. You do not know for certain whether that is all of them, do you? A. No, sir; I don't know that that is all.

Q. But you have that many? A. I consider this a very significant development, and have thought so, as I am on record and in previous testimony, and I think it is a tremendously significant thing. We have as much statistical information as well as this information as we possibly can to try to find out the spread of it, how fast it is spreading, and in what size markets and how important those markets are to our business.

* * * * *

(Tr. p. 4248)

* * * * *

VOIR DIRE EXAMINATION

By Mr. Tincher:

Q. Respondent's Exhibit 68 was prepared especially for presentation by you at this hearing, was it not? A. May I say this, Mr. Tincher: As I am on record, I have been accumulating this information for a long time. And in preparation for coming to testify, the General asked

Bernard F. Trimpe—Voir Dire Examination

me again if I had records which I considered to be complete. In order to make them complete I have instituted a special project in the last three months to get as accurate and final information as I could about private label bleaches, yes.

Q. The General is Mr. Royall?

(Tr. p. 4249)

A. Mr. Royall, yes.

Q. Let me ask you, sir: What use is made of that exhibit other than have it here to be offered at this hearing?

A. Well, if we get it back some day—in the meantime, while these labels came in, I have a girl who has compiled this information for me, and the lists that were compiled.

Mr. Tincher, first of all, from a legal point of view many of these private labels initially came out with labels that looked an awful lot like the Clorox Company label.

May I cite an instance or is that not necessary?

In any event, when these labels came in we made it absolutely clear to some of these people that they were to discontinue the violation of certain trade mark positions that we have. For example, in the use of the Diamond or the actual color, and so forth. That is the first thing we do. We sent this to our lawyer, Mr. Feigenbaum, where we thought there were violations.

Q. That is the Clorox Chemical Company? A. No, the Clorox Company, too.

Q. Both of them? A. Yes. I have been studying this thing for a long time. That is the first thing.

Secondly, we are very much interested in the claims made by our competitors. And in many instances we are very much interested when, for example, we have a copyright,

Bernard F. Trimpe—Voir Dire Examination

(Tr. p. 4250)

I mean a patent, on a special process for Nylon and Rayon which has been granted to us. The use of Clorox on Nylon and Rayon. That has been granted in the last few months.

Now, when we came out two and a half years ago with a statement on our label that you could use Clorox on Nylon and Rayon, practically everybody in the industry put that on their label.

Another thing we wanted to check out is just how many of these people who are manufacturing private label made reference to the use of their product on Nylon and Rayon.

The third reason we wanted to analyze these is that we wanted to compare the quantities recommended in the wash with the quantities that we recommend, and in many instances we have had, where these are important outlets, big chains, we have a continuing sample sent to our attention at Oakland of the major private labels, and we compare their product with our products to compare the relative efficiency, and we use the recommendation on the samples on the washing machines at the Oakland plant to compare the value to the consumer, based on the prices charged.

Those are three instances.

More important to my point of view, one is the legal thing, important to me sales-wise.

Another is a technological thing which we supply our technological people with.

(Tr. p. 4251)

A third thing is on the basis of our patent claims on the use of Clorox on Nylon and Rayon.

Finally, from a sales point of view, I just think I would not be a very intelligent or strong-minded sales manager if I didn't know what was happening to competitive trends in the industry. So from my point of view I want to

Bernard F. Trimpe—Direct

know how many private labels there are, where they are, who is putting them out, how much they sell, and so forth; as much as I can get the information.

Q. That has been true ever since you came with Clorox?

A. That has been true ever since three or four months, to shake down. But when I began to recognize this thing and proceeded to travel I instituted proceedings to bring this to my attention.

* * * * *

(Tr. p. 4253)

* * * * *

DIRECT EXAMINATION

* * * * *

(Tr. p. 4254)

Mr. Royall: I would like to have this marked for identification as Respondent's Exhibit 69-A through -Z.

(The document referred to was marked Respondent's Exhibit 69-A through -Z, for identification.)

Hearing Examiner Haycraft: What is it entitled?

Mr. Royall: This is an alphabetical list of names by brands. It carries the purchasing chain or market, and it carries the name of the—the area, the name of the area in which it is sold. And it carries the name of the manufacturer written in pen wherever the name of the manufacturer was known. It is left blank otherwise.

I might say in connection with this, we have another one which shows them in the distributor areas, our distributor areas, which we may or may not offer. We would be glad to offer it.

By Mr. Royall:

Q. Mr. Trimpe, is this exhibit, Respondent's Exhibit 69-A to -Z, the paper you referred to that was prepared under your supervision in your office? A. Yes. This

Bernard F. Trimpe—Voir Dire Examination

represents a reflection again of my personal knowledge of private label brands and/or reports received from my division men, and/or the distributors, which is correlated with those labels, and we attempted to get the name of the chain or other outlet selling this, how many stores they had, where they were located, the name of the

(Tr. p. 4255)

brand, and the name of the manufacturer where possible, and where possible the date at which that private label brand was introduced or first announced by that store, or series of stores.

Q. Is this exhibit a summary of that information as to private label brands to the extent that you have it? A. This is a summary to the best of my knowledge.

* * * * *

(Tr. p. 4256)

VOIR DIRE EXAMINATION

By Mr. Tincher:

* * * * *

(Tr. p. 4258)

Q. Has any effort been made to see—when you say a chain letter, does this exhibit mean it is sold in every store in that chain, just some of them or can you tell from the exhibit? A. When a chain announces a private label they normally force distribution, Mr. Tincher.

* * * * *

(Tr. p. 4259)

Q. What do you mean by chains force? A. There is a rule with most major chain stores in America that they have what they call forced items for distribution, and

Bernard F. Trimpe—Direct

others that are at the election of the store manager.

When they say forced distribution it means that every store in the outlet must carry the items on the forced list. Normally each order book that the store manager uses to order his weekly needs has an indication on there, whether it is a forced item or whether it is at his election on the basis of the volume in his store or may be the territory in which his store is located, since they say chain stores flare out in many areas. If it is a forced item, it is in the store.

* * * * *

(Tr. p. 4264)

Mr. Tincher: Not strike, but I am moving against admission of the document.

Hearing Examiner Haycraft: Objection overruled. The document will be received in evidence as RX-69-A to Z.

* * * * *

(Tr. p. 4265)

* * * * *

DIRECT EXAMINATION (Resumed)

* * * * *

(Tr. p. 4267)

* * * * *

Mr. Tincher: Mr. Examiner, I thought you ruled that we were going to have private brand information from the producers of it?

Mr. Royall: I am asking him merely to define the term, that is all.

Hearing Examiner Haycraft: But you are asking him to define a term in another area of the industry.

Mr. Royall: No, sir.

Hearing Examiner Haycraft: Counsel in support of

(Tr. p. 4268)

the complaint asked a question and elicited a long answer. This goes along the same line. I am very frankly not

Bernard F. Trimpe—Direct

going to make any finding on it, coming from somebody who is not in that particular area. This witness is not a wholesaler. This matter of control brands is a pretty touchy one. There is some difference of opinion as to what it really constitutes.

Also, the testimony of this witness as to force brands, forced by the chain stores, I can make no finding on that coming from his testimony. There are such things perhaps but I would like to have the testimony from people who are actually in that business. It is hearsay from this witness in both those categories.

* * * * *

(Tr. p. 4300)

* * * * *

Q. Mr. Trimpe, do you know where, prior to the acquisition of Clorox by Procter & Gamble, Texize was sold, in what territory?

* * * * *

The Witness: Textize primarily is sold in the area around Greenville, South Carolina, and in North Carolina. Their plant is located in Greenville.

* * * * *

(Tr. p. 4313)

* * * * *

Hearing Examiner Haycraft: I would like to find out just what it is that you are trying to bring out here. What has the three-quart bottle got to do with it?

* * * * *

(Tr. p. 4314)

Mr. Royall: The three-quart bottle or any other promotional thing like that, this Erie—

Hearing Examiner Haycraft: Let's go into the Erie situation.

Bernard F. Trimpe—Direct

Mr. Royall: You freely let them testify to what we did in Erie.

Your ruling is that they can testify what——

Hearing Examiner Haycraft: If you start asking questions about what they did in Erie, I will listen to you, because that has already been injected as a competitive situation.

Mr. Royall: Under your ruling we couldn't ask what they did in Erie.

Hearing Examiner Haycraft: I will rule as the questions come up. I am not going to pass on what I might have ruled or would have ruled or what have you. In this case certain instances have been testified about by witnesses called in support of the complaint. And I remember Erie, Pennsylvania. If you want to ask this witness to tell his story about the situation in Erie, Pennsylvania, and what happened there, you may go ahead and do it. The foundation has been laid, and you are entitled to testify whatever you did there because there has been an attack made on you there.

But you are going out here now cold and putting up some things that I don't know anything about and have no

(Tr. p. 4315)

relevancy as far as I can see to the issues in this case.

* * * * *

(Tr. p. 4320)

* * * * *

By Mr. Royall:

Q. Mr. Trimpe, have you prepared a chart showing the various advertising and promotional moneys used by your principal competitors in the bleach industry in the last several years? A. I have.

Bernard F. Trimpe—Direct

Q. What is the source of the information which you have included in the chart? A. Basically, my personal observation, in some instances, through division men, and again from reports from my distributors either by letter, by telephone, by wire, or weekly reports.

Q. Do you keep a regular running sort of diary of those, over the years? A. Yes.

Q. What is the purpose of that? A. I think it is my responsibility as Vice President of Sales to know within every power I have to know what my

(Tr. p. 4321)

competitors are doing.

Q. Is that a part of your job as sales manager? A. I consider it as such.

Q. Are these reports made to you in the regular course of business? A. Yes.

Q. And are they relied on by you in mapping out your activities in the sales department? A. Yes.

* * * * *

Mr. Royall: I would like this marked for identification, please.

(Tr. p. 4322)

(The document referred to was marked Respondent's Exhibit 71-A through -N, for identification.)

By Mr. Royall:

Q. Mr. Trimpe, does this chart show the activities over the period set forth therein, of your competitors, Respondent's Exhibit 71-A to -N? A. To the best of my knowledge.

Q. Is it as complete as you have been able to get? A. Yes.

Bernard F. Trimpe—Direct

Q. There possibly may be promotions not included?

A. Yes, sir.

Q. But as far as this exhibit is concerned, this includes all that you know of, of your competitors? A. Right.

Q. Does the chart show the date of the report made to you? A. Yes, it does.

Q. And each instance? A. Yes, sir.

Q. Are those reports available for inspection? A. Yes.

Q. That is, the original reports from the field? A. Yes.

Q. To you? A. Yes.

Mr. Royall: Your Honor, we offer it in evidence.

* * * * *

(Tr. p. 4324)

* * * * *

Hearing Examiner Haycraft: I don't see that there is any relevancy or probative value to it at all. Objection sustained.

Mr. Royall: This can be our tender, your Honor?

Hearing Examiner Haycraft: Yes.

* * * * *

(Tr. p. 4336).

* * * * *

Room 332

Federal Trade Commission

Washington, D. C.

Thursday, 20 November 1958

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

Bernard F. Trimpe—Direct

(Tr. p. 4337)

PROCEEDINGS

* * * * *

Bernard F. Trimpe

resumed the stand as a witness for the Respondent, and having been previously duly sworn, testified further as follows:

DIRECT EXAMINATION (resumed)

* * * * *

(Tr. p. 4338)

By Mr. Royall:

Q. Mr. Trimpe, since you joined the Clorox Company and since your period of service from that date with the Clorox Company, have you had any occasion to replace any of your distributors? A. Yes.

Q. How many? A. Around a half dozen.

Q. Have you had occasion to replace any recently? A. Last year we replaced one.

Q. The six, approximately, you referred to is since you came there in 1955? A. Yes, sir.

Q. Before you make arrangements or appoint a distributor, do you make an investigation of him? A. Yes, we do.

* * * * *

(Tr. p. 4342)

* * * * *

Q. Mr. Trimpe, what factors do you consider in selecting and appointing distributors? A. We go into quite a great deal of detail. We consider for the particular market—

* * * * *

Bernard F. Trimpe—Direct

The Witness: We go into a particular market and we first of all make a list of all available brokerage firms, we analyze the principals that they represent, we investigate the number of wholesale and chain salesmen as well as retail salesmen that they have. We get a Dun & Bradstreet report on their financial ability. Through our advertising agency we make a survey of the direct buyers; in other words, the

(Tr. p. 4343)

wholesalers and chains in the market in regard to their opinion of the various brokers as a competent and efficient sales organization.

Then, after we get all this information, we eliminate those that we feel do not fit our needs. We hold personal interviews with these people at a specified time, giving due consideration to all the factors that we feel are important in representing us in the market.

* * * * *

(Tr. p. 4345)

* * * * *

Q. Mr. Trimpe, these factors which you stated with respect to the distributors who have come since you have been there, are they also factors in whether you will retain a distributor whether he came during your term or before?

A. Yes. In travelling around and working with these distributors, of course, I made my own analyses of them. The principal function in all of these investigations as well as

(Tr. p. 4346)

retaining the distributor is the amount of effort or, in other words, the value of our account in his organization.

Bernard F. Trimpe—Direct

Q. Would the lack of some of the qualities and apparent lack of some of the qualities you outlined result in the distributor not being retained? A. Yes.

Q. Are there any additional factors relating to the—I don't think you stated this—relating to what their relative interest in Clorox as compared with the other products? A. Yes.

* * * * *

The Witness: One of the things we investigate very carefully, and we require in this investigation, is a statement from the distributor or broker as to the relative value of his accounts. The reason we do that is this: We primarily look for certain types of brokers, specialty type brokers, and in that process we, in evaluating the other principals they represent, can then decide how much time and energy they would put on the Clorox account if and when we appointed them.

By Mr. Royall:

Q. Would or would not the importance of the Clorox account

(Tr. p. 4347)

to the particular broker be an element to consider? A. Very greatly.

* * * * *

(Tr. p. 4349)

* * * * *

Q. Mr. Trimpe, in connection with your testimony yesterday, you spoke of a weekly activity report which you required of every distributor. Do you have a regular printed form of that for weekly use? A. Yes.

* * * * *

(Tr. p. 4353)

* * * * *

Bernard F. Trimpe—Direct

Q. By means of these reports and as a result of your personal contacts, correspondence, and telephone conversations, and reports from your division salesmen, all of which you mentioned yesterday, do you know what duties your distributors and their salesmen perform in addition to that of soliciting and taking orders?

* * * * *

(Tr. p. 4355)

* * * * *

A. Yes, I know the duties. I know them personally, working with the people.

By Mr. Royall:

Q. Tell what the duties are, what they do. A. These salesmen have a specific route that they cover in every territory. They go into the store and they sell Clorox. They check the shelf——

Hearing Examiner Haycraft: Is Clorox the only thing they are selling?

The Witness: No, sir; they sell three or four other items.

Hearing Examiner Haycraft: How many?

The Witness: At the most, they try to concentrate on three or four items on a call.

Hearing Examiner Haycraft: Do you mean by that, that they only have three or four other items to sell?

The Witness: Oh, no, no; I do not mean that at all.

(Tr. p. 4356)

Our distributors represent as few as five or six principals and some of them represent as many as 25 or 30 or more than that, even, some of whom they give sales service to, and some of whom they do not.

Bernard F. Trimpe—Direct

But when they go into a store they check shelf stock of Clorox, they check the back room inventory, they check the labels on the shelf, they check for out-of-stock by sizes, they contact the store manager and try to sell him on a new size, if that is a problem in that store, in conjunction with or without our promotions they ask for displays and try to sell a display, and if they get it, in many instances, they build the display.

Hearing Examiner Haycraft: Which of those things have you told about here would not be ordinarily done by a salesman?

The Witness: Well, I think, your Honor, with a great deal of respect for your thought yesterday, this gets back into your basic philosophy of what a sales force should do. To my thinking, why I feel the way I do about these salesmen making a better call, I honestly believe that a man's service function that he performs as well as his selling function is very vital.

There are other companies who feel that your primary function is to do a selling job only and rely on the employees of the store once a decision has been made to,

(Tr. p. 4357)

for example, build the display, or to just call attention to out-of-stock to the stock boy and not carry out the merchandise from the back room. Many companies don't even want you to go in the back room and check stocks.

Hearing Examiner Haycraft: They won't let you?

The Witness: In some instances, of course, the Union won't allow you to. We run into that problem, too. Not generally.

Hearing Examiner Haycraft: I may be usurping somebody else's function but as long as I raised this myself yesterday, I am trying to find out from this witness which

Bernard F. Trimpe—Direct

of these various things that he says this salesman does is not the ordinary thing that is expected of a salesman, whether he is working for a broker or for a manufacturer.

By Mr. Royall:

Q. Answer that question. A. I thought I was answering it, as to the specific duties. I think the service function, your Honor, primarily.

Hearing Examiner Haycraft: You would be surprised. And I am surprised at you saying that. Because I don't know of a single manufacturer's salesman who doesn't perform service along that line.

The Witness: But I don't think to the extent that we require our people.

* * * * *

(Tr. p. 4358)

* * * * *

Q. These various things that are done by the distributor's salesmen, Mr. Trimpe, are they some of the things that you require and ask for them to do and check on? A. Absolutely.

Mr. Tincher: Mr. Examiner, I am sincerely not trying to be obnoxious but we keep using this word "require" and we established yesterday that these—

Hearing Examiner Haycraft: We haven't established, yesterday. It is being very much dis-established. So don't worry about that. Objection overruled.

I will say this, Mr. Tincher, for your information,

(Tr. p. 4359)

based upon that report that you have there: I am going to have to be compelled to treat these distributors as if they

Bernard F. Trimpe—Direct

were employees, because they do get from them the same type of thing they would get from their sales force.

By Mr. Royall:

* * * * *

(Tr. p. 4362)

* * * * *

Q. The question is do you think selling through distributors is better for Clorox and selling through direct salesmen, and I will add why is it better if it is?

Hearing Examiner Haycraft: By direct salesmen do you have in mind Procter and Gamble?

Mr. Royall: Of the type Procter and Gamble uses.

* * * * *

(Tr. p. 4363)

A. Yes, I think we are much better off—

* * * * *

By Mr. Royall:

Q. Will you answer? A. We are much better off to be represented by brokers in the field than through direct salesmen.

Q. Why? A. There are many elements in this.

I think the first and most important element in my decision is the fact that our broker sales force for the most part have represented our company for 20 to 25 or 30 years. They have a prestige in the market, they have employees who in turn have been under their supervision or have been hired by them for great periods of time and it is my sincere belief that a salesman does his job not only by following certain selling practices, but by the prestige that he has with the accounts on whom he calls. A direct sales force for the most part is built primarily around the growth potential of the salesman. That is, as the man does

Bernard F. Trimpe—Direct

a good job in a certain territory he normally is given an opportunity

(Tr. p. 4364)

to move into another territory and show how he can handle himself in that situation.

So that they are not able to stay in a territory for any great period of time.

I am not quoting just myself, but at the National Food Brokers' Convention—

Q. I don't think you should quote anybody. A. All right. I feel very strongly about that. I feel that our brokers have an excellent prestige in the market. They are accepted. And in many cases they can obtain feature in display, and they can get cooperation that a direct sales force can not because it is subject to a lot of—

Hearing Examiner Haycraft: I would like to interrupt for a moment.

Is it your testimony and your belief that the Clorox prestige is greater than Procter and Gamble prestige?

Mr. Royall: Do you mean of the companies?

Hearing Examiner Haycraft: Yes.

The Witness: Of the companies?

Hearing Examiner Haycraft: He talked about the prestige of Clorox. Is it your testimony and your belief that the Clorox prestige is greater than Procter and Gamble prestige in the market where they sell?

The Witness: I have no reservation in the world. I feel very strongly, and the answer is yes, the prestige of

(Tr. p. 4365)

the Clorox Company is greater.

(Tr. p. 4366)

Bernard F. Trimpe—Direct

Q. Mr. Trimpe, in formulating your sales policies for Clorox, do you need certain information as to what is going on? A. Yes.

Q. What are your principal sources of information besides your personal contacts? A. Through my divisional sales managers?

Q. Yes. A. Other sources I have indicated, through the distributors.

Q. Do you or do you not rely in large part on this information concerning the bleach market and its competitive factors? A. I rely on it.

Q. Can you tell me some of the general types of information that you obtain and rely on? A. Pricing information, promotions, advertising, the competitive area of sale, for example.

Q. Do you mean competitive of you or of your competitors? A. Competitors. What is happening in terms of their expansion.

Hearing Examiner Haycraft: Just what use do you make of information of competitors' expansion?

The Witness: Well, for example, in Erie, Pennsylvania, we had word that one of our competitors was expanding

(Tr. p. 4367)

to a new area. I think we have some of the information I received in the form of telegrams and letters in the record. We acted very quickly on that one.

By Mr. Royall:

Q. Do you get any information on changes in the selling territories of your competitors? A. Yes.

Q. Do you get any information about their advertising and promotions? A. I do.

Bernard F. Trimpe—Direct

Q. And do you get any information in the case of new plants or changes of location of plants of your competitors? A. Yes.

Hearing Examiner Haycraft: What do you make of that?

Mr. Royall: I was going to ask him that next, your Honor.

The Witness: For example, if we know that a competitor is building a new plant, we normally ask our distributor to go down and investigate it, take pictures of it, send them to us, and when it is completed we have pictures of the completed plant. We have some idea then of the—

Hearing Examiner Haycraft: What do you do with that? What do you do with it as a matter of policy?

(Tr. p. 4368)

The Witness: We know the industry well enough to know that the plant is in there and it will enable them to expand their shipping area.

Hearing Examiner Haycraft: You still don't tell me what you do in connection with your policy because somebody else is building a plant.

The Witness: We take this information and we do everything we can then to step up our combative effort in terms of increased effort at the retail level through our distributor in that area for the first thing: If they—for example, at the time of the opening of the plant—have an introductory deal of the product, then we consider whether or not we want to meet that.

Hearing Examiner Haycraft: That is an introductory deal. I can see that. But I can not, for the life of me, see how the erection of a plant in and of itself would have any effect on your policy.

Bernard F. Trimpe—Direct

The Witness: We know that this is the basis for an expanding market area, and therefore another new competitor in the area.

Hearing Examiner Haycraft: That is a matter of information. But do you ever change your price or change your policy or method of distribution because a competitor has built a plant?

The Witness: We do not change our price, nor do

(Tr. p. 4369)

we change our method of distribution.

Hearing Examiner Haycraft: In other words, you wait until some overt act is performed by them before you move?

The Witness: No, I don't wait until some act is performed by them. I make it very clear immediately to the distributor in that territory, and normally I go out there or we have a discussion or we do it by telephone or my division man goes there. "All right, here is a new competitive situation. The best defense is an offense, so let's get on the ball with the retail men and do everything we possibly can to make our competitive situation as strong as possible." That involves many things at the retail level.

By Mr. Royall:

Q. In this category of information on which you rely, is or is not the entry of new brands and manufacturers in the business important to you? A. Vitally.

Q. The Examiner has asked you in general what you do when you find new developments. Is the picture sometimes reversed and you have new developments yourself? A. Yes.

* * * * *

Bernard F. Trimpe—Direct

(Tr. p. 4370)

* * * * *

Q. Do you know, Mr. Trimpe—and don't answer this question because there will probably be an objection to it—do you know whether in the general business of manufacturing and selling food products it is usually and customary for one competitor to take notice of and seek to meet the competitive activities of another?

Mr. Tincher: I object.

Hearing Examiner Haycraft: I will take official notice of that. Go on. That is human behavior.

* * * * *

(Tr. p. 4373)

By Mr. Royall:

Q. Mr. Trimpe, there is testimony in the record at Pages 2867-9 and 2897 to the effect that—

* * * * *

Q. Relating to a price of \$2.01 per case of quarts in Buffalo as against a price of \$1.91 in adjoining territory for Clorox—can you give us the story on this? A. We ran a test in Buffalo and Atlanta, as well.

Q. There was one in Atlanta, too?

(Tr. p. 4374)

A. Yes, sir.

We put a handle on a quart bottle and had to increase the price in order to offset the increased cost for the handle, which was in turn reflected by the trade at a higher price at the retail level.

Q. What was it? One cent a quart? A. One cent a quart. As a result of that test over a six-months period we found our business declining in both markets, and we

Bernard F. Trimpe—Direct

withdrew the test and reduced the price back down to \$1.91.

Hearing Examiner Haycraft: You continued to sell the bottles with the handle on?

The Witness: No. We decided that it wasn't a wise decision to try to increase the price. We felt the consumer wouldn't pay the extra price for a handle on a quart bottle, at least at this time.

By Mr. Royall:

Q. Mr. Trimpe, this calls for a Yes or No answer because the Court doesn't want to get into a lot of other details: Have you had recent experience where there was a difference in the gap between your price and the price of another bleach where the market was similarly affected?
A. Yes.

* * * * *

(Tr. p. 4376)

Hearing Examiner Haycraft: You can ask him if it is his understanding that Hilex is sold at the same price as his.

* * * * *

By Mr. Royall:

Q. Is it your understanding—

Hearing Examiner Haycraft: Is that to the retail trade or to the consumer?

Mr. Royall: To the grocery store.

Hearing Examiner Haycraft: Grocery store?

Mr. Royall: I guess that is what he knows.

Hearing Examiner Haycraft: Has that been reported to you?

The Witness: Yes, it has been reported.

Hearing Examiner Haycraft: That Hilex sells—

Bernard F. Trimpe—Direct

The Witness: They have either the same price or in some territories a higher price to chain wholesalers.

(Tr. p. 4377)

Q. Based on your own personal knowledge and reports that you get in the due course of business, where do you meet Hilex in the competition?

(Tr. p. 4378)

The Witness: Wisconsin, Nebraska, Colorado, North and South Dakota.

(Tr. p. 4380)

Q. In what competitive area do you meet Fleecy White, based on your knowledge and the information you receive in the regular course of business? A. Virginia, North and South Carolina, Arkansas, Louisiana, Texas, Chicago, Ohio—

Hearing Examiner Haycraft: Ohio or Iowa?

The Witness: Ohio. Illinois, Indiana.

Hearing Examiner Haycraft: Throughout all those states, or just portions of them?

The Witness: I have named primarily where they have good distribution.

Hearing Examiner Haycraft: You say throughout the State of Virginia, for example?

The Witness: Yes.

Hearing Examiner Haycraft: When you said Ohio, did you mean throughout the State of Ohio?

The Witness: This is just starting in the last

Bernard F. Trimpe—Direct

(Tr. p. 4381)

six or eight months and it is primarily in the central and eastern part, but it is spreading throughout the state very rapidly.

We started a year ago in Arkansas and Louisiana and it is spreading rapidly. In Texas it has been there for quite some time. Southern and Southwestern parts, particularly.

* * * * *

Q. Mr. Trimpe, as to Texize, will you give us the same information as to where you meet them competitively, based on what you know and learn in the due course of your business? A. South Carolina, principally, and in the central section of Tennessee.

Q. When did you first get this information as to Tennessee?

* * * * *

A. This past calendar year.

(Tr. p. 4382)

* * * * *

Q. Where do you meet in competition on the same basis as I have asked the other question, where do you meet in competition Sani-Clor? A. California and Nevada.

Q. How long have you— A. Overseas in the Philippines. But I guess that doesn't apply.

Q. What is that? A. It is just domestic United States? They are also overseas in the Philippines.

Q. We are not asking about overseas. A. California and Nevada.

Q. How long have you been meeting them in competition in Nevada? A. In the last year.

Q. There has been a considerable amount of testimony in the case of the Government about Erie, Pennsylvania.

Bernard F. Trimpe—Direct

Has anything else happened in Erie, Pennsylvania, based on your knowledge and the information you have received in the due course of business, has anything happened there in this year in the way of promotion? A. The Purex Company have come back with another "cents off" label in the last 30 days, and we have countered with a defensive measure of our own.

(Tr. p. 4383)

Q. What is that defensive measure? A. We ran a newspaper coupon.

* * * * *

(Tr. p. 4384)

* * * * *

Q. Mr. Trimpe, there was offered in evidence yesterday Respondent's Exhibit 71, which is entitled "Competitive Liquid Bleach Promotions." I want to ask you a little about the method of getting this information. Was that obtained largely from the type of report which you put in evidence this morning from your distributors? A. Yes.

* * * * *

Q. And you have available, do you not, the distributors' reports upon which this was based? A. I have available the posting books we used as a basis for that report.

Q. What other books do you have that would support these

(Tr. p. 4385)

figures? A. I have the actual reports in my files.

Q. Actual reports of distributors? A. Yes.

Q. That is what you based this on? A. Yes.

Mr. Royall: Your Honor, I am going to re-offer that, and I am not going to argue at length. I am so confident

Bernard F. Trimpe—Direct

it is correct I want to tell you why I want it in, and why I think it should go in.

* * * * *

(Tr. p. 4386)

* * * * *

One of my associates suggested, and I think it is a good suggestion: We are not introducing this, your Honor, for the purpose of getting into a lot of brush fires on individual items. There is no intention to try to develop the details or prove the effect or indicate any facts or circumstances relating to it.

Hearing Examiner Haycraft: Don't you think counsel

(Tr. p. 4387)

in support of the complaint would do that for you? In other words, they would take it upon themselves to do a great deal of cross-examination and it will probably lay the foundation for rebuttal on that point. It really is not an issue.

Mr. Royall: The way I feel is this: For the limited purpose that we offer it, and we would limit its purpose for that, I don't think anything would be competent on either cross-examination or rebuttal except, did they have that type of promotion. We do not anticipate that they will be able to show a single error in this chart.

* * * * *

Hearing Examiner Haycraft: Let me ask you, what sort of finding would you want me to make on that?

Mr. Royall: I want you to make a finding, the two that I intimated. The first was that the types of promotion which these gentlemen apparently inferentially are complaining of are promotions that other bleach companies

Bernard F. Trimpe—Direct

(Tr. p. 4388)

have used.

Hearing Examiner Haycraft: What would that tend to prove? In other words, where would that meet any of the issues in this case? As I understand it, their whole case is based on the size of Procter and Gamble, the amount of money that they are able to spend in advertising and promotion. And the mere fact that some of the smaller concerns in the industry have been trying, through the years, unsuccessfully, to meet the competition of Clorox with promotions and advertising to their limited financial ability certainly would not tend to disprove what Procter and Gamble might do with their power, their bigger advertising budget, and so on.

Mr. Royall: We are not liable in this action for what Clorox had previously done in promotion.

Hearing Examiner Haycraft: No, I grant you that.

All that you are responsible for, of course, is what Procter and Gamble is going to do in the future.

Mr. Royall: That's right.

Hearing Examiner Haycraft: Procter and Gamble may do a number of things in the future. We don't know.

Mr. Royall: They may.

Hearing Examiner Haycraft: We listened to their Trimpe this morning. They may be so sold on the situation that he has presented, that they may agree with him and leave him in charge of Clorox and say, "Go ahead."

(Tr. p. 4389)

On the other hand, they may say, "We think we can do a better job. We will put that under one of our divisions and put you at the head of that division perhaps but we will let Procter and Gamble salesmen carry this and they will go out and sell it."

Bernard F. Trimpe—Direct

Of course, Mr. Trimpe will be very unhappy about that.

But the power still resides there, that that is a decision Procter and Gamble can make. It hasn't made it yet but it may make it tomorrow. We don't know.

* * * * *

(Tr. p. 4392)

* * * * *

Mr. Tincher: We want it to be clearly shown that we are not contending that everybody in the industry except Clorox Chemical Company was using these promotions prior to the acquisition. We are making no inferences or statements that this type of—any type of promotion is new to the bleach industry. We put through our own witnesses what other people used prior to the acquisition.

The question is, what Clorox Chemical was doing and what the Clorox Company was doing.

* * * * *

(Tr. p. 4393)

* * * * *

By Mr. Royall:

Q. Mr. Trimpe, do you, in the operation of the Clorox sales, meet competition from private labels brands? A.

I am not sure I understand how you mean.

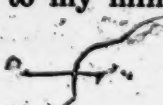
Q. Are they competitive with you? A. Oh, yes.

* * * * *

(Tr. p. 4395)

The Witness: I think they are very competitive for many reasons. First of all, we have from Nielsen the share of market enjoyed by private labels, broken down by divisions, and it is quite substantial to my mind.

* * * * *



Bernard F. Trimpe—Direct

Hearing Examiner Haycraft: What do you mean by "substantial"?

The Witness: In some areas it amounts to as much as ten percent of the total bleach business. On a nationwide—

Hearing Examiner Haycraft: How much of that business do you enjoy?

The Witness: In the same areas, forty to fifty percent, or more. It varies of course by the market.

Another way in which they are competitive is, for example, if a particular chain does not have a private label bleach and then brings it in to the stores, they normally do not expand the shelf section and we lose shelf position.

* * * * *

Hearing Examiner Haycraft:

* * * * *

Go ahead.

The Witness: Another instance, they feature, give

(Tr. p. 4396)

special displays and attention to it, and these are all competitive factors as far as I am concerned.

* * * * *

By Mr. Royall:

Q. Mr. Trimpe, has the number of such private brands increased since 1955?

* * * * *

A. In my opinion, yes.

By Mr. Royall:

Q. Have there been new private brands since the acquisition? A. Yes.

* * * * *

Bernard F. Trimpe—Direct

(Tr. p. 4407).

* * * * *

By Mr. Royall:

Q. What was the situation as to advertising and promotions when you came with the company in 1955?

(Tr. p. 4408)

* * * * *

The Witness: In 1955, when I came with the company, the Clorox Chemical Company was using newspapers on a national basis, and magazines, primarily.

By Mr. Royall:

Q. What type of promotion was used? A. They were not using the factory allowances they had used before but were limiting it to strictly national advertising. But when I came——

* * * * *

Q. What promotion did they have?

Hearing Examiner Haycraft: Do you mean as distinguished from advertising?

Mr. Royall: I intended a different thing, your Honor.

The Witness: It could be any number of things. A factory allowance would be a promotional effort, or a promotion like "spring house cleaning" promotion, to get special emphasis on the product.

(Tr. p. 4409)

By Mr. Royall:

Q. Was there much promotional activity at that time?

Hearing Examiner Haycraft: Was there any?

The Witness: Not that I know of, no, not at that time.

By Mr. Royall:

Q. Shortly after you came with the organization, was there any change in policy? A. Yes. I was fortunate

Bernard F. Trimpe—Direct

because the company had conducted some research and we were able to institute a promotion called the "nylon-rayon campaign." This was significant to our position primarily because we were able to announce through newspaper advertising, through merchandising pieces at the retail level, and on our label the fact that you could use Clorox on these synthetic fabrics. That was very significant. So we built an entire campaign around it and announced it right after I came with the company.

Then, later on, because that had been successful, and I wanted to extend the selling period, we had a fall promotion and it was successful so we followed that with a spring promotion.

Q. That was the spring and fall promotions. They started in what year? A. In 1956.

Q. In the spring?

(Tr. p. 4410)

A. The fall promotion, I believe, the first one was in 1956, and the spring promotion in 1957.

Q. When did the "nylon-rayon" campaign start? A. I believe that was in early 1956. The spring of 1956. I know it was.

Q. While they were going on, was there any policy change as to the development or experimentation or consideration of other forms of promotion? A. We were giving a lot of consideration to television and we finally—

Q. Let's stay on promotion first. I will withdraw that question.

During the time that these promotions started in 1956, beginning in the spring, what about the advertising that was going on? A. It remained basically the same.

Q. And was there a diversion of funds from the budget

Bernard F. Trimpe—Direct

to promotion? A. Some slight diversion in order to pay the expenses of the promotion.

Q. While those were going on, was there any further study of promotions in 1956 and 1957? A. As I indicated, the nylon-rayon campaign had been successful so we expanded into the fall promotion and the following spring into the spring promotion.

(Tr. p. 4411)

As I started to say, we were giving consideration to changing some of our immediate area expenditures into TV or TV spots. That is another thing we were looking at. And we were doing that by reducing the amount of money that we—or the number of newspapers that we used, primarily, or the frequency of the schedule.

* * * * *

(Tr. p. 4412)

* * * * *

Q. What other promotions followed that? A. I think we essentially built our whole advertising and promotional campaign during '55 and '56 and '57, around those, although I think I have testified previously we were entering Canada, had a special promotion up there where we used a different type.

Q. Different types? A. Yes.

* * * * *

Q. Were you at that time considering and experimenting with other promotions? A. Yes, we were giving the fullest consideration to—as I learned more about the industry and what the industry was using and how they were promoting and merchandising, obviously I came back to my office from the field and

Bernard F. Trimpe—Direct

(Tr. p. 4413)

worked with the agency on any possibility that we could use to promote our product.

Q. With whom did you confer? Who was really your adviser at that time on advertising promotion? A. Mr. Eric Bellingall, and he is the account executive of the agency.

Q. What agency is he with? A. Honig-Cooper.

Q. He was in that position before you came to the Company? A. Yes.

Q. Was he the adviser to the Company on advertising and promotion? A. He is the account executive, yes; adviser.

Q. Who were the persons, aside from yourself, who worked on this, who started these promotions and studied them from the time you came until the time of the acquisition? A. Well, they included—I think I am the person principally who instituted the idea of getting into promotional effort. On the other hand, certainly Mr. Bellingall and I conferred many, many times.

Q. You say you started that. That was after you first came there; is that right? A. That is correct.

* * * * *

(Tr. p. 4414)

* * * * *

Q. Continuing from that time forward, I believe you testified you have made such promotions as you thought were in the interests of the Company; is that right? A. That is correct.

Q. And has that continued down to the date of your testimony here today? A. Yes.

Bernard F. Trimpe—Direct

Mr. Royall: Your Honor, this is following a question that was asked by the complainant witnesses at one of the hearings.

By Mr. Royall:

Q. Have you at any time received any instructions, advice or suggestions that you should delay or hold up or forego any promotional activity which you had planned as being in the best interests of the Company? A. No.

(Tr. p. 4415)

Q. Has anything connected with this litigation altered your plans?

* * * * *

A. No. I think the record speaks for itself.

By Mr. Royall:

Q. You mean what by that? A. Well, I think I have been and the people with me have been very aggressive, as aggressive as we possibly can be, to try to maintain our share.

* * * * *

Hearing Examiner Haycraft: What is your share?

The Witness: The share is based on what the Nielsen information figures indicate to me.

Hearing Examiner Haycraft: Do you think you are entitled to it?

The Witness: As a sales manager, it is my responsibility to keep it there.

By Mr. Royall:

Q. Mr. Trimpe, the type of promotions which you have been engaged in, we will say now or since the acquisition, how long does it take for them to produce effect? A.

Bernard F. Trimpe—Direct

Some of them instantaneously, but the over-all effect of them takes anywhere a measurement of two to six months.

(Tr. p. 4416)

Q. That depends on the type of promotion? A. Yes.

* * * * *

(Tr. p. 4420)

* * * * *

Q. Mr. Trimpe, did Clorox ever conduct sampling operations while you were there? A. We have considered the possibility of sampling Clorox.

Q. Did you ever do it? A. No.

Q. Why didn't you do it? A. For many reasons. One, there is a postal regulation against putting it through the mails. There is a problem of bulkiness of it. And there is the problem of the danger of it, if it gets in the hands of a child in the house, of breakage.

And besides, we have one of the main reasons, that we have good distribution, and you normally sample a non-established product in order to get distribution of the product. So we don't think this is a sound venture.

* * * * *

(Tr. p. 4426)

* * * * *

By Mr. Royall:

Q. Mr. Trimpe, the question relating to static and the

(Tr. p. 4427)

answer you gave to it have been stricken by the court, and I think entirely properly. I now ask you to describe for me any new developments in the liquid bleach industry, and we will say the last two years or slightly prior thereto,

Bernard F. Trimpe—Direct

as to the use and the market demand of the liquid bleach market as a whole.

* * * * *

A. The nylon-rayon and other synthetic fabric developments I believe is a very important factor in the continuing use of liquid bleach in laundry, and a big factor in the expanded use of it, because in the past two years it has been proven, and the housewife is recognizing that she can use a liquid bleach on her synthetic fabrics.

The answer of the cotton industry to synthetic fabrics was the application or development of so-called wash and wear fabrics. And these were developed with the use of resins placed on the fabrics, and recently, in the past few months, there have been developed resins which are non-chlorine retentive, so that the housewife can also put these wash and wear fabrics in with the other fabrics in the wash.

There has been—and this is not something new, but the population is increasing at a very rapid pace, and I believe that is a big factor. And then, as I indicated,

(Tr. p. 4428)

the increased use of liquid bleach for other than laundry use is another factor. And when that is coupled with the number of homes that are being built, and our expanding housing economy, together with the increased side uses, I believe that the liquid bleach industry is in good position.

* * * * *

Q. Mr. Trimpe, do you know of any use of bleach also in laundromats? A. Yes, it is used in laundromats.

Q. Is that a rather new development or expanding development? A. Yes.

Hearing Examiner Haycraft: I would like to ask the witness right there. After reading Mr. Stoneman's testi-

Bernard F. Trimpe—Direct

mony I gather that from some research he had made that the percentage of increasing use or increasing volume and so on had declined. I don't think he went so far as to say that the market was declining yet, but that it had leveled off. Have

(Tr. p. 4429)

you had any experience along that line? Have you made any research to see whether the actual volume—you gave your opinion of what you think but have you seen any figures from Nielsen or anywhere else?

The Witness: Yes. I know that that is not true. It is an expanding market.

Hearing Examiner Haycraft: What percentage from year to year?

The Witness: It is very interesting, your honor. The bleach industry, according to—

Hearing Examiner Haycraft: Liquid bleach.

The Witness: —according to Nielsen, is one of the best indicators of grocery volume in the United States today. In other words, if the grocery business is operating at a ratio of about 6 percent or 7 percent increase per year, the bleach industry has followed almost consistently that.

Hearing Examiner Haycraft: Has that been true in the last year or two?

The Witness: Yes.

Hearing Examiner Haycraft: It has been true in the last year or two?

The Witness: Yes.

Hearing Examiner Haycraft: That is where we are getting the two different opinions.

* * * * *

Bernard F. Trimpe—Direct

(Tr. p. 4431)

* * * * *

By Mr. Royall:

Q. Does your percentage of the market, Mr. Trimpe, vary in different areas? A. Yes.

Q. Does it vary greatly? A. Yes.

Mr. Tincher: Right there, sir, the first question was all right because we got Nielsen which shows a variance. But if we are going to have the word "greatly" and so on, Nielsen is the best evidence.

Hearing Examiner Haycraft: You have the Nielsen figures. They will either confirm or contradict.

But I know as a matter of fact that it is true.

You can't have the uniformly same percentage in every market. I can almost take official notice of the fact that in a industry of this type there is bound to be variation in percentage of any given market that each one may occupy in it, especially where you have a number of numerous, small, local competitors in local areas who are striving to live, gain, and expand.

(Tr. p. 4432)

By Mr. Royall:

Q. Mr. Trimpe, state whether or not that condition is due to the vigor of the competition of other companies in those respective areas?

Mr. Tincher: I object.

Hearing Examiner Haycraft: Overruled. I will take official notice of that.

I am not going to let anybody prove or disprove it. That is a phenomena that can't be done away with so long as there is competition.

Mr. Royall: Will you let him answer Yes?

Bernard F. Trimpe—Direct

Hearing Examiner Haycraft: Yes, I will let him answer and overrule the objection.

The Witness: Yes.

(Tr. p. 4433)

By Mr. Royall:

Q. I also asked you whether, at the time of the institution

(Tr. p. 4434)

of the nylon-rayon promotion and the spring house cleaning, whether you were planning any other promotions for the future. What is the situation? A. I said that we had the spring and fall—we had the nylon-rayon campaign and spring and fall promotion and that we were considering—I think I am on record as saying this, and if not, I am now—I was considering all the possible promotions that were being used in the bleach industry, as I became aware of them, to perhaps either strengthen the fall and spring house cleaning promotion or consider other possibilities.

Q. That was planned prior to the merger, that consideration? A. Yes. That was in 1956 and 1957.

Q. Has the general policy of the Clorox Company changed since the merger as to promotions? A. No.

(Tr. p. 4436)

Hearing Examiner Haycraft:

Bernard F. Trimpe—Direct

Has there been any change as a result of the change in ownership, so far as your duties are concerned?

The Witness: None.

By Mr. Royall:

Q. In your opinion, will the acquisition have any effect?

Hearing Examiner Haycraft: I will sustain the objection to that. He doesn't know what is in the minds of the officials of Procter and Gamble.

* * * * *

(Tr. p. 4437)

* * * * *

Mr. Royall: I would like this document marked for identification as RX-77-A and B. It is a letter. We have suggested to counsel for the other side, in order not to encumber the record unnecessarily, that they stipulate this letter from Mr. Stoneman is correct.

Hearing Examiner Haycraft: Did they stipulate?

Mr. Royall: They have not.

(The document referred to was marked Respondent's Exhibit 77-A and B for identification.)

* * * * *

(Tr. p. 4441)

* * * * *

Hearing Examiner Haycraft: That is all it amounts to. Respondent's Exhibit 77-A and -B are received.

(The document referred to, heretofore marked for identification Respondent's Exhibit 77-A and -B, was received in evidence.)

* * * * *

(Tr. p. 4443)

* * * * *

George R. Bennett—Direct

George R. Bennett

was called as a witness on behalf of the Respondent and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Hearing Examiner Haycraft: Will you state your full name and residence?

The Witness: George R. Bennett, 33 Gates Circle, Buffalo, New York.

By Mr. Pride:

Q. Mr. Bennett, what is your occupation? A. I am President and Treasurer of the Bennett Sales

(Tr. p. 4444)

Corporation, 434, Delaware Avenue, Buffalo, New York.

Q. How long have you held that position? A. I founded the Bennett organization 35 years ago and have been in charge of it ever since.

Q. What business does this Bennett Sales Corporation do, Mr. Bennett? A. We are known as a food brokerage company. In other words, we act as sales representatives for a given number of manufacturers and cover a prescribed territory in Western New York.

Q. What sort of products do these manufacturers produce that you represent? A. Well, we have quite a number of—

Q. I mean, are they grocery products generally? A. Yes, grocery products.

Q. Mr. Bennett, are you a distributor for the Clorox Company at the present time in your territory? A. Yes.

Q. How long have you been a distributor for that company? A. Since about 1926.

George R. Bennett—Direct

Q. In other words, for something around 33 years you have had this account; is that right? A. That's right.

Q. What other products do you handle? A. Well, we have Peter Pan peanut butter made by Derby

(Tr. p: 4445)

Foods, in Chicago; we have the entire Borden food line, that is, Borden's instant coffee, evaporated milk, condensed milk, Starlac, and all of their dry brands. We also have Bon Ami, Sun Sweet Prunes, Sun Maid raisins, and we have Red Heart dog food, and a number of other nationally advertised brands.

Q. You mentioned that you handle the Borden line. You named certain products.

How many products are manufactured by Borden that you handle in your territory? A. I believe it is nine. It is either nine or ten.

* * *

Q. What is your sales territory, Mr. Bennett? A. Roughly, from Western New York State, a very small part of Pennsylvania, just a couple of cities in Pennsylvania—Bradford and Warren—New York State from Buffalo to Rochester.

* * *

(Tr. p. 4446)

* * *

Q. Does the Clorox account represent a substantial part of your business?

* * *

A. Yes. I would say it represents a little better than 25 percent of my business.

Q. Mr. Bennett, are you personally actively engaged in this business of distributing Clorox? A. Oh, yes.

George R. Bennett—Direct

Q. Do you have salesmen who are also engaged in this work? A. Yes, I do.

Q. How many? A. We have nine now.

Q. What do you and your salesmen do in the distribution of Clorox? A. Well, some of the boys and myself call on the wholesale grocers and chain stores. I personally call on the three largest chains in Buffalo. And I have four men calling on the wholesale grocery. Then we have four men calling on the retail grocers, super markets and chains, the individual chain stores.

Q. In addition to performing these duties that you have described, do the people working for your organization

(Tr. p. 4447)

perform any services in the store itself? A. Yes. Our retail men are calling the stores and they clean the stock, if necessary, take a look in the back rooms and bring out stock and put it on the shelves. They might test some of the bottles to see that the caps are on right, and rearrange the shelving, and things of that nature.

Q. Do you or representatives of your Company, Mr. Bennett, regularly report to the Clorox Company? A. Yes. We send them a report, I believe it is once a week.

Q. Mr. Bennett, in the course of your business, do you personally have occasion to visit retail grocery outlets? A. Yes, I do.

Q. How frequently? A. Well, I usually get into the chains, the important chains, some important chains, ever week, because I call on the chain headquarters and I want to know what is going on down at the store level when I am talking to the buyers.

* * * * *

(Tr. p. 4450)

* * * * *

George R. Bennett—Direct

Q. Let me ask you, Mr. Bennett, on the basis of your experience, is the shelf space accorded to Clorox today more

(Tr. p. 4451)

or less favorable than that accorded to it before the acquisition?

A. It is less favorable.

(Tr. p. 4464)

Hearing Examiner Haycraft: The question I am putting to you is, in those stores that sell more quarts, do you have more shelf space for your quarts?

The Witness: Not necessarily.

Hearing Examiner Haycraft: Those that are moving?

The Witness: That is the trouble that we are having right now.

Hearing Examiner Haycraft: That is your opinion. You don't know how your sales compare with somebody else's?

The Witness: I do know—

Hearing Examiner Haycraft: All you know is that

(Tr. p. 4465)

you don't have as much as you did have.

The Witness: If I may, your honor, I do know from this standpoint: That the situation is so bad that we have had to take our men and go out into the chains on Friday and pack out Clorox in all the chains we could possibly reach on that day so we will have enough stock on hand to take care of the week-end sales. If we didn't do that, we would be out of stock all the time.

George R. Bennett—Direct

(Tr. p. 4466)

* * * * *

The Witness: Isn't it an indication that we don't have the proper shelf stock when we are constantly running out of stock on the shelves.

Hearing Examiner Haycraft: Yes, that is one indication.

* * * * *

By Mr. Pride:

Q. Mr. Bennett, who are your competitors in the sale of liquid bleach in your sales area? A. 101, made by the—

Q. Is that a brand? A. 101 is a brand of bleach, made by the Gardner Manufacturing Company, made in Buffalo. And Sunny-Sol, made by Wiley Jones, of Calidonia, New York.

Q. Are there any other competitive brands in your sales area? A. We have two private labels in there, that are factors in the market. One is Bright-Sale, in the A&P, and the other is Speed-Up in the Nu-Way markets.

(Tr. p. 4467).

Q. Based on your experience, Mr. Bennett, this Bright-Sale brand that you mentioned, is that sold exclusively in the A&P stores?

* * * * *

The Witness: Yes.

* * * * *

Q. Do you know whether it is manufactured by A&P itself? A. I do.

Q. Is it? A. No.

(Tr. p. 4468)

* * * * *

George R. Bennett—Direct

Q. Mr. Bennett, coming back to the subject that has been touched upon by at least one other witness, and I suppose has been touched upon by many others in the course of this case, where, based on your experience is the liquid bleach section located in the average grocery store?

A. It is usually in the household section, what we call "household," referred to as the household section, and displayed along with bluing and starches and brooms and mops and things of that nature. Usually among household cleaning agents.

(Tr. p. 4469)

It might be near the soap and detergents section. It is not in it. It might be across the aisle or around the corner from it, in the general vicinity of it.

Q. Is the bleach section intermingled with the soap and detergent section?

A. No.

* * * * *

(Tr. p. 4472)

* * * * *

Room 332
Federal Trade Commission
Washington, D. C.

Friday, 21 November 1958

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 4473)

PROCEEDINGS

* * * * *

George R. Bennett—Direct

George R. Bennett

resumed the stand as a witness for the Respondent and, having been previously duly sworn, testified further as follows:

DIRECT EXAMINATION

* * * * *

(Tr. p. 4474)

* * * * *

By Mr. Pride:

Q. Mr. Bennett, at the conclusion of yesterday's hearing you were telling us about the various promotions of the Clorox Company. I don't know whether I asked you this question or not but did these spring and fall house cleaning promotions that you have described continue in the year 1958, this year? A. Yes, they did.

Q. In the ones that were handled this year, were there any features added over those that were in effect in 1957, for example? A. Yes. We had in addition the consumer liquidating premium, both this year spring and this year fall promotions.

* * * * *

(Tr. p. 4475)

* * * * *

Q. Based upon your experience, Mr. Bennett, did the addition of this self-liquidating premium make the promotion more effective?

* * * * *

A. No, it did not.

By Mr. Pride:

Q. Generally speaking, Mr. Bennett, and based upon your experience, what has been the effect of these promotions on an overall basis, that is, over a period of time?

George R. Bennett—Direct

Mr. Tinch: What promotions are they, sir?

Mr. Pride: The ones he has talked about, the Clorox promotions.

(Tr. p. 4476)

Hearing Examiner Haycraft: Go ahead.

The Witness: They have helped our business during four or five weeks that we have had the promotion on, and when the promotion is off the business settles back to about where it was before.

By Mr. Pride:

Q. Mr. Bennett, based upon your experience, in the marketing of a product such as Clorox, do you consider it desirable to change methods of advertising and promotion from time to time?

* * * * *

A. Oh, yes. Every manufacturer changes his plans from time to time. Any given set of ads or any given promotion will get stale in time and you have to be constantly seeking

(Tr. p. 4477)

new ideas, new approaches to the problem.

* * * * *

(Tr. p. 4479)

* * * * *

Q. Are there types of promotion and advertising which are available to regional bleaches which are not available to a nationally-distributed product, such as Clorox?

* * * * *

A. Yes, there are.

(Tr. p. 4480)

* * * * *

George R. Bennett—Direct

Q. Will you tell us some of them, Mr. Bennett? A. There are small cooperatives that might have a promotion coming up very suddenly, that will maybe give you a week's notice on it, maybe sometimes not that much. And the local company can jump in and take advantage of that where a national company can not.

Take for instance, this beam-cast. I have always refrained from recommending anything of that nature to any of my principals because once you get into once of those kinds of proposition you have got to go in and do it throughout the entire territory.

Under the Robinson-Patman law, you can not do for one chain what you can not do for another. If we got into one of those kinds of propositions with one of our accounts it would mean that we might have to participate in four or five or six different outlets throughout our entire territory. It would become too costly for a national manufacturer.

* * * * *

(Tr. p. 4481)

* * * * *

Q. Are there any bleaches sold in your territory, Mr. Bennett, other than through local grocery stores?

* * * * *

A. Yes, there are.

By Mr. Pride:

Q. By whom are they sold? A. We have three or four peddlers, so-called, that we refer to as "kitchen bleach makers," and they peddle this bleach from store to store, small stores, and also from house to house.

(Tr. p. 4482)

* * * * *

George R. Bennett—Direct

Q. Mr. Bennett, what is generally the shelf price of Clorox in your sales territory?

* * * * *

A. The quart is 17 cents; the half-gallons, 37 cents; and the gallons, 57 cents.

(Tr. p. 4483)

* * * * *

Q. What are your competitor's shelf prices, generally?
A. The 101 and Sunny-Sol are exactly the same.

Q. As Clorox? A. As Clorox.

The private brands are usually one or two cents a quart under our price, and the half-gallons and gallons would be proportionately lower.

* * * * *

(Tr. p. 4484)

* * * * *

Q. You told us yesterday that the New-Way chain was now selling a private label bleach under the brand name of "Speed-up," is that right? A. That's right.

Q. When did that brand come into competition with you in the Buffalo market?

* * * * *

A. The early part of this year.

By Mr. Pride:

Q. Prior to that time, did this New-Way chain have a private label bleach? A. No, they did not.

Q. Is that a substantial chain in the Buffalo area? A. Yes, it is.

* * * * *

(Tr. p. 4485)

* * * * *

George R. Bennett—Direct

Hearing Examiner Haycraft: Do you know how many stores they have?

The Witness: Yes. They have 90 stores.

* * * * *

(Tr. p. 4487)

By Mr. Pride:

Q. Mr. Bennett, have your retail salesmen ever worked in conjunction with any Procter and Gamble salesmen?

A. No, sir.

* / * * * *

Q. Mr. Bennett, shortly prior to the time of this acquisition of Clorox by Procter and Gamble, which was prior to August 1, 1957, did you attend a meeting in San Francisco at which appeared Procter and Gamble executives and Clorox Company executives? A. Yes, I did attend that meeting.

Q. Do you recall anything being said at this meeting about any advantages being obtained as a result of this advertising as a result of joint advertising, joint promotions of Clorox and Procter and Gamble products?

* * * * *

(Tr. p. 4489)

* * * * *

A. No, I do not recall any statement of that nature being made at that meeting.

* * * * *

(Tr. p. 4490)

* * * * *

Q. Do you know, Mr. Bennett, whether or not the sales of Clorox bleach in the Nu-Way stores have decreased since the introduction of the Nu-Way Store's private label bleach Speed-Up?

* * * * *

George R. Bennett—Direct

A. They have decreased, yes.

* * * * *

(Tr. p. 4491)

* * * * *

Q. Now I ask you have they decreased? A. They have.

Q. Mr. Bennett, what in your opinion has been the effect of the acquisition by Clorox of Procter and Gamble on your business, or on the distribution of sales of Clorox in your territory?

Mr. Tincher: Why is this witness qualified to give opinions?

Hearing Examiner Haycraft: I will sustain the objection. That is something I have to decide on. I am not going to let him decide this case for me.

Mr. Pride: As to whether it has had an effect, your Honor?

Hearing Examiner Haycraft: Yes. That will be an easy way out of it.

By Mr. Pride:

Q. Based upon your experience in the sale of Clorox in the Buffalo territory, Mr. Bennett, do you know of any way in which the acquisition could have effect upon the bleach business in that Buffalo area?

(Tr. p. 4492)

Mr. Tincher: I object to that.

Hearing Examiner Haycraft: Sustained.

By Mr. Pride:

Q. In that question I am relating it to either in respect to the sale of Clorox or any other liquid bleach in the territory.

George R. Bennett—Cross

Mr. Tincher: I still object.

Hearing Examiner Haycraft: Same ruling.

(Tr. p. 4493)

CROSS-EXAMINATION

By Mr. Tincher:

(Tr. p. 4495)

Q. You sell Bon Ami? A. Yes.

Q. Where in the grocery store is Bon Ami located?
A. Bon Ami is usually located in the soap section, where the cleansers are.

Q. Is that with Ajax and—— A. Yes, Ajax, Babo, and so on.

Q. That group of products in many grocery stores is in what you would call the household supply section? A. No. That would be in the soap section, detergents.

Q. Whereabouts in the soap section are these products?
A. They would be along side of the cleansers, Babo and Ajax, and those products that you mentioned.

Q. Those are cleansers. Where in the soap section would these cleansers be? A. They are usually at one end, along down at the end where

(Tr. p. 4496)

all the soaps are.

Q. They are usually at the end where the soaps are, which is immediately contiguous to the beginning of the household supply section, isn't that correct? A. I wouldn't say always immediately. Many times I can take

George R. Bennett—Cross

you in many stores and show you the soap section, say running down this aisle, and the household section might be around the corner on the other side of it.

Q. On the other side of the gondola? A. Yes.

Q. Then many times you will find it across? A. Across, yes.

Q. Facing each other. And many times in some stores you will find it all on one side of one gondola? A. Yes.

* * * * *

(Tr. p. 4500)

* * * * *

Q. Do you have a separate corporation exclusively for the handling of Clorox? A. Yes, I do.

Q. What is the name of that corporation? A. Bennett Sales Corporation.

Q. Will you tell us, please, Mr. Bennett, just exactly how

(Tr. p. 4501)

you deal with Clorox with reference to whether you purchase it, do you take it on consignment or how are you billed for it? Just how you obtain it and then how you get rid of it? A. Well, we would go out to a customer and secure a carload order. That carload order is mailed up to the Cleveland plant. Cleveland would ship that car directly to the customer. The day that car is shipped to the customer Clorox Company will then invoice us. And at the very same time we invoice the customer. And we get 2 percent ten days, and we give the customer 2 percent ten days.

On the—let's take this present month, for example. From November 1 until the 15th of November all sales that we would make during that period, that 15-day period,

George R. Bennett—Cross

we would send our check out to the Clorox Company on the 25th of the month, ten days later.

Of course, we never see the merchandise. It is always shipped directly to the customer.

That is about it.

Q. Is that the way you handle all of your other accounts? A. No, it is not.

Q. Then what is the difference? A. The other accounts are handled very similar, yes. They are handled along the same line, with the exception that we are paid a brokerage at the end of each month.

Q. A brokerage fee by the supplier?

(Tr. p. 4502)

A. By the seller, yes. By our principal.

* * * * *

The Witness: The profit comes between the price that the Clorox Company charges us and the price at which we bill the customer.

Hearing Examiner Haycraft: How much is that difference?

The Witness: About 11 cents a case.

Hearing Examiner Haycraft: What is that, percentage-wise?

The Witness: I would say, around 6 percent, I believe. I think that is about right.

* * * * *

(Tr. p. 4504)

* * * * *

By Mr. Tincher:

Q. Does the Clorox Company give you a quantity discount which you pass on to the purchaser? A. Yes.

* * * * *

George R. Bennett—Cross

(Tr. p. 4505)

* * * * *

Q. Does the Clorox Company have an advertising allowance, a cooperative advertising allowance? A. No.

Q. Does the grocer—— A. I beg your pardon. Yes, I am wrong on that.

Q. What is your relationship with that particular item? A. Just how do you mean that?

Q. What do you do in the payment or the checking of the

(Tr. p. 4506)

payments, the compliance, to see that advertising is used, if any? A. Well, we naturally call in the advertisers and request them to advertise Clorox. We constantly are after them to get ads. At the end of each three-months period we collect up all the tear sheets and see how much advertising has been done. And we issue a check to them on the basis of so much a case for all they have purchased during that quarterly period.

We then send the consolidated bill to Clorox for all that we have paid out for that quarter, and Clorox in turn reimburses us.

Q. What is that advertising allowance now? A. Six cents a case.

Hearing Examiner Haycraft: Do you send the tear sheets on into Clorox to support your——

The Witness: In some cases we do.

* * * * *

(Tr. p. 4508)

* * * * *

Q. This 25 percent of your business, is that the totality of the business of the corporation that you formed to sell Clorox? A. No. That would be 100 percent of the corporation I formed to sell Clorox.

George R. Bennett—Cross

Q. That is what I meant, the totality of it. And that Corporation—— A. 25 percent is the combination of the two corporations.

* * * * *

(Tr. p. 4511)

Q. Mr. Bennett, you have testified that your shelf space today is less favorable than before the acquisition of Clorox by Procter and Gamble; is that correct? A. That is correct.

* * * * *

The Witness: I base it on my own observation and the reports of my salesmen. I stated, I believe yesterday, that these girls from Beam-Cast are going around in the stores, and this has been particularly true in Loblaw's recently, because Loblaw's have only taken on the Beam-Cast about three months ago.

These girls have been going in the stores, and as a matter of fact, cutting down the shelf space of Clorox and increasing the shelf space of 101 to the point where I made quite a point in going to the vice president of the company and telling him that I didn't think this was fair. As a matter of fact, he issued an order, I understand, to the store managers, but these store managers have been reluctant to stop these girls from doing as they please, because they are afraid of the girls reporting them on out-of-stock conditions.

(Tr. p. 4512)

By Mr. Tincher:

Q. These girls, sir, do they go in and just move the merchandise? A. I beg your pardon?

Q. Do these girls go in and just move the merchandise? A. No, they just don't move it, they do about the same thing that our men do. They might clean out some bottles,

George R. Bennett—Cross

they might see that the merchandise is properly priced, but the main thing that they are trying to do is to get more shelf space.

* * * * *

Q. Do I understand that they don't—and I am not trying

(Tr. p. 4513)

to give you a hard time, believe me, I am just slightly confused—do you say they don't touch the stock, yet they get more shelf space? A. They do touch the stock, yes. Sure, they have to touch the stock to get more shelf space.

Q. They do rearrange the shelf space? A. Sure they do.

Q. I take it then that your entire testimony about shelf space being less favorable today is based upon that situation in the Loblaw stores? A. That and also the Nu-Way, since they have taken on their private brand. They have pushed Clorox to the side and are giving a lot more shelf space to their own private brand.

Q. What brand of bleach have they cut out? A. They have not cut out any.

Q. There was only one brand of bleach in there before? A. No, they didn't have a private label before.

Q. Only Clorox was in there before? A. No, they had 101.

Q. 101 has been cut down, also? A. No, it has not because they are in there with Beam-Cast. They are protected by Beam-Cast. They are getting more than their share. 101 is getting more than their share.

Q. What is their share, sir?

(Tr. p. 4514)

A. Their share would, to be exact, be about one-quarter the share of Clorox, if you want to base it on turn-over and on sales.

George R. Bennett—Cross

Q. And what have they got it up to, a third? A. No. In many cases it is double the size of Clorox.

Q. How do you know their share should be one-quarter?

A. Because I have talked to the store managers and I have talked to the buyer. And I know exactly what the sales of my competition is. Naturally, I would have to know.

Q. And the buyer—— A. I discussed this with the buyers and they tell me what the private label sales are.

Q. What I am trying to determine, sir, is your entire knowledge of what share of shelf space of brands other than Clorox should have is based upon what these store people have told you. A. No, it is not. I have set down at the buyer's desk and he has taken his cards, sat there in front of me and showed me deliveries that went out to the stores on private label, in the same weeks what went out on Clorox. We have made comparisons.

Q. When did you do that, sir? A. We do that frequently, on different products. That is something that we go through on one product or another almost every week of the year.

(Tr. p. 4515)

Q. I am talking of this specific instance. Is that something very recent? A. Yes, that is something quite recent. Within the last thirty days. I believe that I wrote a letter to Mr. Trimpe on this subject within the last thirty days, and I was quite upset and quite mad over the situation. I told him what I was running up against here.

Q. What can you do to correct this situation, sir? A. Well, about all we can do is keep talking to the headquarters and urging them to give us more shelf space based on the turn-over. When we know our sales are greater, we feel we are entitled to more shelf space. At the same time

George R. Bennett—Cross

myself and my salesmen are constantly talking to the store managers or the store owners and I might say pleading or trying to sell them on the idea of giving us more shelf space because we see that they are constantly running out of stock.

As I testified here yesterday, we are having our men go into the stores on Friday and pack-out so that we will have stock there for Friday and Saturday. You can go into almost any of the chains on Monday morning and find their shelves bare, whereas there will still be plenty of private label and plenty of 101 on hand.

* * * * *

(Tr. p. 4516)

* * * * *

Q. Isn't it possible those brands are still there because they haven't sold? A. Sure, that is possible. Sure, that is possible.

Q. Of course, you don't know the actual sales of all these private brands and of 101, or of any other brands other than Clorox?

* * * * *

A. No, I have no figures here that I can quote you.

* * * * *

(Tr. p. 4517)

* * * * *

Hearing Examiner Haycraft: How many fronts do you have now of each size in those stores?

The Witness: That varies, your Honor, according to the size of the store. I can picture some stores that will carry possibly six facings of quarts and about the same number of half gallons, and about the same number of gallons. I can picture other stores that might have twice that amount.

George R. Bennett—Cross

And I can picture other stores that have two, two, and two. You just can't make a general statement on that.

Hearing Examiner Haycraft: Each manager has the control of that?

The Witness: Yes.

* * * * *

(Tr. p. 4519)

* * * * *

By Mr. Tincher:

Q. Mr. Bennett, I would like to ask you a few questions about this Beam-Cast business that you have testified about. Do you know how much this Beam-Cast costs a subscriber?

* * * * *

The Witness: Yes. I brought a rate card with me.

In Loblaw's—we are talking about two chains now—in Loblaw's they have 24 spots a week. It costs \$180. And in Nu-Way they have 24 spots a week and it costs \$90.

* * * * *

(Tr. p. 4520)

* * * * *

Hearing Examiner Haycraft: Who pays Beam-Cast for this service?

The Witness: The manufacturer.

* * * * *

(Tr. p. 4521)

* * * * *

Hearing Examiner Haycraft:

* * * * *

What liquid bleaches have had this?

The Witness: Just 101. They will not take

George R. Bennett—Cross

myself and my salesmen are constantly talking to the store managers or the store owners and I might say pleading or trying to sell them on the idea of giving us more shelf space because we see that they are constantly running out of stock.

As I testified here yesterday, we are having our men go into the stores on Friday and pack-out so that we will have stock there for Friday and Saturday. You can go into almost any of the chains on Monday morning and find their shelves bare, whereas there will still be plenty of private label and plenty of 101 on hand.

* * * * *

(Tr. p. 4516)

* * * * *

Q. Isn't it possible those brands are still there because they haven't sold? A. Sure, that is possible. Sure, that is possible.

Q. Of course, you don't know the actual sales of all these private brands and of 101, or of any other brands other than Clorox?

* * * * *

A. No, I have no figures here that I can quote you.

* * * * *

(Tr. p. 4517)

* * * * *

Hearing Examiner Haycraft: How many fronts do you have now of each size in those stores?

The Witness: That varies, your Honor, according to the size of the store. I can picture some stores that will carry possibly six facings of quarts and about the same number of half gallons, and about the same number of gallons. I can picture other stores that might have twice that amount.

George R. Bennett—Cross

And I can picture other stores that have two, two, and two. You just can't make a general statement on that.

Hearing Examiner Haycraft: Each manager has the control of that?

The Witness: Yes.

* * * * *

(Tr. p. 4519)

* * * * *

By Mr. Tinch:

Q. Mr. Bennett, I would like to ask you a few questions about this Beam-Cast business that you have testified about. Do you know how much this Beam-Cast costs a subscriber?

* * * * *

The Witness: Yes. I brought a rate card with me.

In Loblaw's—we are talking about two chains now—in Loblaw's they have 24 spots a week. It costs \$180. And in Nu-Way they have 24 spots a week and it costs \$90.

* * * * *

(Tr. p. 4520)

* * * * *

Hearing Examiner Haycraft: Who pays Beam-Cast for this service?

The Witness: The manufacturer.

* * * * *

(Tr. p. 4521)

* * * * *

Hearing Examiner Haycraft:

* * * * *

What liquid bleaches have had this?

The Witness: Just 101. They will not take

George R. Bennett—Cross

(Tr. p. 4522)

competitive products on there.

By Mr. Tincher:

Q. Has your company ever tried to get on Beam-Cast?

A. No.

Hearing Examiner Haycraft: He tried to get on. All he has to do is buy it and pay for it.

By Mr. Tincher:

Q. By "your company" I mean your brokerage company.

A. We did—I personally used Beam-Cast when it first came out. I used it for a period of thirteen weeks. I tried it out and dropped it.

Q. Why did you drop it? A. At that time they were not performing the services that they are today.

Q. Are you going to look into it and try to take it again, sir? A. No, sir.

* * * * *

(Tr. p. 4525)

* * * * *

Q. What promotions of Clorox have occurred in your sales area since August 1957? I believe you mentioned a premium on the two drives this year, the spring and the fall. A. Two promotions, two house cleaning promotions.

* * * * *

The Witness: Spring house cleaning and fall house cleaning.

By Mr. Tincher:

Q. There was a premium on the spring drive? A. Yes.

Q. What was that?

George R. Bennett—Cross

(Tr. p. 4526)

A. An apron.

Q. What was the premium on the fall drive? A. A laundry bag.

Q. Fall drive? A. Maybe a laundry bag in the spring and the apron—the laundry bag was first and the apron was second. Yes, that is right.

Q. From your experience, sir, in selling grocery store products, have you had experience with different types of promotions other than premiums? A. I think probably every type of promotion that has ever been attempted by these companies that I represent.

Q. And those are nationally advertised companies? A. Yes.

* * * * *

(Tr. p. 4527)

* * * * *

Q. What is the basis of your statement that self-liquidating premiums in these two drives did not make the promotion more effective than it had been?

(Tr. p. 4528)

A. Well, it didn't help the sales one bit more. I mean, our sales—as a matter of fact, our promotion this fall was not quite up to previous promotions, and premiums did not seem to make too much difference in the Buffalo market any more because of the fact that Nu-Way and Loblaw both have premium plans of their own. They make it very easy for the consumer to obtain a thousand and more premiums at wholesale cost.

On top of that, I don't believe these premium promotions are too effective unless we can get mass displays and display the premium. We are not able to get mass displays in our stores. The stores in our city just simply

George R. Bennett—Cross

refuse to pile Clorox up because they are afraid of the breakage of the product.

* * * * *

(Tr. p. 4532)

Hearing Examiner Haycraft: He wants to know on what facts he bases his statement that the premiums were self liquidating.

* * * * *

The Witness: These premiums were offered to the consumer in advertising at a certain price, and I know that the price they were offered at covered the cost and the mailing charges to the Clorox Company.

By Mr. Tincher:

Q. That is what I am trying to find out. How do you know that? A. That is only good business sense.

Q. Is that your answer? A. Yes, that is my answer. I have dealt with enough of these self-liquidating premiums that I know that no manufacturer pays more than what he advertises or offers them to the consumer.

Q. Have you ever bought and used these premiums yourself? A. Yes, I have bought a number of premiums myself.

(Tr. p. 4533)

Q. As a broker? A. As a broker. Not for Clorox, however. I have used them in connection with some of our other lines.

* * * * *

(Tr. p. 4534)

* * * * *

Q. You talked about peddlers of kitchen bleaches, "kitchen bleachers," I believe you called them. That is nothing new. We have had such peddlers of liquid bleach

George R. Bennett—Cross

in the liquid bleach industry from time memorial, haven't we? A. Oh, yes.

Q. Who are these peddlers in your sales area, and by that I mean, who is the individual or the company or— A. They don't go by any company names. They go by their individual names, and they are coming and going.

Q. They come and go all the time. And that has been true for many years? A. I wouldn't know how often they come and go, but I know during the war, or just before the war, we had a great many of them. Then he disappeared during the war. Then they came back again after the war.

Q. Did they sort of appear more frequently in periods of

(Tr. p. 4535)

recession, when lots of people are laid off work? A. I wouldn't say so, no.

Q. Aren't a lot of the people making bathrub or kitchen bleach, aren't they people who have been laid off from their employment? A. I wouldn't—I don't think I would be qualified to answer that.

Q. You mentioned on Clorox a price of 17 cents a quart and the same for 101 and Sunny-Sol; is that right?

* * * * *

The Witness: I said that 101 and Sunny-Sol's

(Tr. p. 4536)

prices are exactly the same as ours, 17 cents, 37, and 57.

By Mr. Tincher:

Q. Right, sir. A. I said that on the private labels—referring to Brightsale and Speed-up—that they are one or two cents less per quart than Clorox or Sunny-Sol or 101. And proportionately lower on the half gallons and gallons.

George R. Bennett—Cross

Q. Right. That "proportionately" is what I was getting to. The private labels in your area in the gallon-size sell for around 39 cents, don't they? A. No, they are not quite that low.

Q. Forty-one? A. No. I would say they are—they are 49.

Q. A&P is selling Bright Sale at 49 cents? A. Forty-nine.

Q. Loblaw's? A. Loblaw's are 57, on Clorox. Loblaws do not have a private label.

Q. Does New-Way have a private brand? A. Yes.

Q. What is it selling for? A. Forty-nine.

Q. And the same question with respect to the half-gallons about the prices of the various private brands?

A. Thirty-three on the private labels.

* * * * *

(Tr. p. 4538)

* * * * *

Q. Let's talk about A&P. A&P has always sold its private label liquid bleach on the shelf considerably less than it charges for Clorox, has it not? A. That is correct.

Q. That would go back for a period of time several years prior to the acquisition of Clorox by Procter and Gamble?

A. Yes.

* * * * *

(Tr. p. 4544)

* * * * *

Q. Is Utica, New York, in your sales area? A. No.

* * * * *

Q. Olean? A. Olean is.

Q. What bleaches are sold there, liquid bleaches? A. 101, Sun-Sol, and a little bit of Radiant, which is a little

William Keller—Direct

company, a very small company in Olean, a local product.

Q. Has it been there since 1955? A. Yes.

* * * * *

(Tr. p. 4546)

* * * * *

William Keller

was called as a witness on behalf of the Respondent and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Hearing Examiner Haycraft: State your full name and address, please.

The Witness: William Keller, 5 Kenwood Avenue, Verona, New Jersey.

By Mr. Royall:

Q. Mr. Keller, by whom are you employed? A. Great Atlantic and Pacific Tea Company.

Q. In what capacity are you employed? A. Assistant buyer.

Q. Do you, in the course of your regular duties, receive reports from time to time about purchases made by A&P of Clorox bleach? A. Yes, sir; I do.

Q. And of purchases made by A&P of Brightsail? A. Yes, sir.

Q. Do you, in the course of your business, compile this information that you received?

(Tr. p. 4547)

A. Yes, I did.

Q. Do you receive it on a periodic basis? A. Yes, sir.

Q. How often? A. Well, our Bright Sail suppliers usually supply the information at the end of each month. Some on a quarterly basis.

William Keller—Direct

Q. How about the Clorox; what information do you get that from? A. We get that from the Clorox Chemical Company.

Q. How often? A. Every six months.

Q. What is the purpose of that? Is that for the purpose of comparing the two? A. Yes.

* * * * *

Q. They are the two largest sellers of liquid bleach?

(Tr. p. 4548)

A. Yes, sir.

Q. In your stores. Do those purchases reflect the sales that you make of those bleaches? A. We purchase those products on a weekly basis.

Q. What is that? A. We purchase on a weekly basis. It is easy to replace inventory.

Q. So, for all practical purchases, your purchases and sales are the same? A. Practically.

* * * * *

Q. Do you have that information in total quantities, that is, total quantities of 32-ounce equivalent units? A. No. Ours are in case-purchase reports.

Q. By sizes? A. Yes, sir.

Q. Have you converted that into 32-ounce equivalent units; that is, a quart unit? A. That is a quart unit.

(Tr. p. 4549)

Q. Have you, by multiplication, reduced that to a quart unit? A. We don't generally, but it can be done.

Q. You have done it in this case at our request; is that right, sir? A. Yes, sir.

Q. And have you done that for the first half of 1957, for the second half of 1957, and for the first half of 1958? A. Yes, sir.

William Keller—Direct

Mr. Royall: I would like this marked for identification as Respondent's Exhibit 78.

(The document referred to was marked Respondent's Exhibit 78, for identification.)

* * * * *

Mr. Royall: Your Honor, we offer in evidence Respondent's Exhibit 78.

* * * * *

(Tr. p. 4552)

* * * * *

Hearing Examiner Haycraft: You can do that. If you want to present an earlier period you may get that as a part of your rebuttal if you think it is necessary. I don't think it is necessary. If you think it is, that will be up to you. That won't have any bearing on this particular exhibit. The objection is overruled.

Respondent's Exhibit 78 for identification is received in evidence.

(Tr. p. 4553)

* * * * *

Q. Mr. Keller, does anyone else sell, any other company, sell Bright Sail except A&P? A. No.

Q. Does A&P manufacture its own Bright Sail? A. No. We purchase from outside suppliers.

Q. How many different manufacturers do you buy it from, approximately? A. Five or six.

Q. Included in that number, will you state whether or not Purex, Linco, Prescott, and Hood are included? A. Yes, sir.

* * * * *

(Tr. p. 4554)

William Keller—Cross

CROSS EXAMINATION

By Mr. Tinch:

Q. Included in that number should be Prescott Company, of Passaic, New Jersey? A. Yes, sir.

Q. The Hood Chemical Company of Ardmore, Pennsylvania? A. Yes, sir.

Q. Linco Products of Chicago? A. Yes, sir.

Q. Charles H. Netherson Company, of Dallas? A. Yes.

Q. The Purex Corporation, of South Gate, California? A. Yes, sir.

Q. And Sapo Elixer, of St. Louis? A. Yes.

Q. Do each of these liquid bleach producers also sell in the A&P stores their own brands of liquid bleach? A. I don't know about Netherson. I know Prescott sells Dazzle bleach.

Q. And that is sold in the A&P stores? A. Yes, that is their brand.

Q. In certain sections of the country? A. Yes.

Q. How about Purex? A. Purex does, yes.

(Tr. p. 4555)

Q. How about Linco? A. Yes.

Q. Hood? A. Yes.

Q. What is the reason, sir, for buying private labels as well as the regular brand from these manufacturers?

A. What is the reason?

Q. Yes. Why isn't it all one or the other?

* * * * *

The Witness: It is a customary practice of our company to buy private labels.

* * * * *

Marvin J. Eubanks—Direct

(Tr. p. 4559)

* * * * *

Q. In addition to these six suppliers who sell you Bright Sail, and some of them sell you their own brands, what other suppliers sell liquid bleach to A&P? A. I wouldn't know offhand because there are many local bleach manufacturers that we never see any records of our purchases on those products, because they are only local concerns.

* * * * *

(Tr. p. 4570)

* * * * *

Marvin J. Eubanks

was called as a witness on behalf of the Respondent and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Hearing Examiner Haycraft: State your full name and address.

The Witness: Marvin J. Eubanks.

* * * * *

(Tr. p. 4571)

By Mr. Pride:

Q. Mr. Eubanks, what is your occupation? A. At the present time I am employed by the Kroger Company in their Chicago division as grocery merchandiser.

Q. How long have you been with the Kroger Company? A. Since 1947.

Q. In what capacity, sir? A. I joined Kroger in 1947 and was in our home office in various capacities. While I was there I travelled our 23 divisions and then in

Marvin J. Eubanks—Direct

1954 I was transferred to our Chicago division as grocery buyer. Then in March of 1956, was made grocery merchandiser, the position I now hold.

Q. How many stores are there in the Kroger organization, Mr. Eubanks? A. In the entire organization there are around 1424, I think.

Q. How many divisions are there in the Kroger organization? A. There are 23 divisions throughout the Midwest and South.

Q. How many stores are there in the Chicago Division? A. At the present time, 79.

Q. What are your duties and responsibilities as a grocery merchandiser in the Chicago division? A. I am responsible for buying and selling of all grocery products.

Q. What authority do you have in connection with the

(Tr. p. 4572)

carrying out of those duties? A. Well, I have complete authority and responsibility for the items that we buy, the items that we sell, along with supervising a staff of buyers and working with our stores and our field organization.

Q. In general does the grocery merchandiser in the Kroger divisional organization have the same general duties and responsibilities in the various Kroger divisions? A. Yes. Basically the same—they are basically the same throughout the entire Company.

Q. And is the Chicago division, let us say, typical, organizational-wise, of the various Kroger divisions?

* * * * *

A. Yes, it is typical.

Q. Is liquid bleach an item which is sold in all of the Kroger stores in your division, Mr. Eubanks? A. Yes, it is.

Marvin J. Eubanks—Direct

Q. How many brands of liquid bleach are being sold in Kroger stores in the Chicago area? A. At the present time we are carrying four brands. We carry Clorox in quarts, half-gallons and gallons; we carry Linco in the same three sizes; we carry Fleecy White in

(Tr. p. 4573)

quarts and half-gallons; and a brand called Say-A-Day in gallons.

Q. Mr. Eubanks, have these brands of bleach been sold in these sizes that you have named in the Kroger stores since 1956? A. Yes, they have.

Q. Who manufactures the bleaches which you carry other than Clorox bleach, of course? A. Linco is manufactured by the Linco Distributing Company, which has a plant in Chicago; Fleecy White is manufactured by the John Puhl Company which was recently purchased by Purex; and Sav-A-Day is manufactured by the Barton Chemical Company.

Q. Does that have a plant in Chicago? A. Yes they do.

Q. Mr. Eubanks, do you have figures available here showing the sale of liquid bleaches in the Chicago division of the Kroger Company from January, 1956 through July, 1958? A. Yes, I do have.

Mr. Pride: Mr. Reporter, would you mark this for identification as Respondent's Exhibit 82?

(The document referred to was marked Respondent's Exhibit 82, for identification.)

By Mr. Pride:

Q. Mr. Eubanks, I show you this paper which has been marked Respondent's Exhibit 82 for identification, and ask

Marvin J. Eubanks—Direct

(Tr. p. 4574)

you what it is? A. These are our movement figures of liquid bleach from 1956 through August, 1958. However, these are converted to their gallon equivalents. The figures that I put together were in cases.

As I understand, it was asked that they be changed to gallon equivalents, which I have checked.

(Tr. p. 4575)

Mr. Pride: I offer the exhibit.

VOIR DIRE EXAMINATION

By Mr. Tincher:

(Tr. p. 4578)

DIRECT EXAMINATION (resumed)

By Mr. Pride:

Q. In this period, Mr. Eubanks, which includes, as it is stated here, the first eight months, then the third category

(Tr. p. 4579)

here showing 12 months from August 1957 to August 1958, is there any overlap of the figures which appear— is there any inclusion of the figures which appear in the first eight months' figures into the 12 months' figures for 1957-1958? A. No, there are not. What he said there is correct. We do operate on a 12-period calendar—13 four-week periods.

Marvin J. Eubanks—Direct

The figure shown here, it says the first eight months of 1947, are the first eight periods of 1957.

* * * * *

(Tr. p. 4583)

Hearing Examiner Haycraft: Yes, to get the total.

As I understand it, this is offered solely for the purpose of showing the relative market share handled by the Kroger stores in the Chicago area and not to show a comparative trend.

I will accept the exhibit for that purpose.

* * * * *

(Tr. p. 4585)

Hearing Examiner Haycraft: The objection will be overruled, and Respondent's Exhibit 82 will be received in evidence.

(The document referred to, heretofore marked for identification Respondent's Exhibit 82, was received in evidence.)

* * * * *

(Tr. p. 4587)

By Mr. Pride:

Q. Tell me, Mr. Eubanks, what is the policy in connection with the allocation of shelf space in the Kroger Stores in Chicago?

Hearing Examiner Haycraft: For liquid bleach.

The Witness: The basis on which space is allocated to bleach, or any other item for that matter, is based on sales of the particular item.

* * * * *

Marvin J. Eubanks—Direct

(Tr. p. 4588)

Hearing Examiner Haycraft: Is that left up to the store manager?

The Witness: For the most part; yes, sir.

Hearing Examiner Haycraft: He has a general policy?

The Witness: Yes, sir. He has the prerogative of rearranging and reallocating space in his store, depending upon the rate of sale of the product.

By Mr. Pride:

Q. That is all under your supervision, however, Mr. Eubanks? **A.** That is correct.

Q. Let me ask you, in the light of your policy in the Kroger Stores, allocating shelf space, has there been any change in that policy as to the shelf space allocated to Clorox before it was acquired by P&G and after it was acquired by P&G? **A.** There has never been any change whatsoever.

Q. In this policy of allocation do you attempt to apply that with respect to each brand of bleach that is sold in the Kroger Stores? **A.** That's correct.

Q. Does Clorox get any preference in that allocation? **A.** No preference unless we have more people wanting Clorox in an individual store than some other brand.

(Tr. p. 4589)

Q. In the allocation of shelf space in your stores, in line with this policy that you have stated, is the fact that a particular company manufactures a number of products which are sold in your store of any significance? **A.** No. It matters not how many items a particular firm makes or sells. We are only interested in the individual product.

Marvin J. Eubanks—Direct

Q. Do your stores, by the way, sell products manufactured by Procter & Gamble? A. Yes, we do. We stock most of the products that P&G makes but not in all sizes. We do not carry, I am positive, at least one size of Camay, and we are going to discontinue Duz because it is not selling fast enough.

* * * * *

(Tr. p. 4596)

* * * * *

Q. Mr. Eubanks, in terms of purchases of Clorox made by your company for your stores, are they in any way affected by the fact that P&G now owns Clorox? A. There has been no effect.

Q. Does the fact that P&G manufactures certain items

(Tr. p. 4597)

in the soap and detergent field which have substantial consumer demand have any effect upon your purchases of Clorox? A. It has had no effect.

* * * * *

(Tr. p. 4598)

* * * * *

Q. I will ask you whether the fact that Procter and Gamble does manufacture these other items in the soap and detergent field have any effect upon its ability to force—and I use the word in quotes—or require you to increase your sales of Clorox in order to secure other Procter and Gamble products?

* * * * *

A. Certainly in this day and age of modern merchandising, with the competition as keen as it is, no one will force us to buy a product, and I hope that never happens.

Marvin J. Eubanks—Direct

I don't see how they can possibly force us to buy a product.

* * * * *

(Tr. p. 4599)

* * * * *

Q. Mr. Eubanks, since the acquisition by Procter and Gamble of Clorox on August 1, 1957, has there been any change in the sales method or sales activities of the distributors of Clorox?

* * * * *

A. There has been no change in the method of our purchasing Clorox since the acquisition of them by Procter and Gamble.

By Mr. Pride:

Q. I have a few questions here, Mr. Eubanks, that touch upon subjects that have been testified about. One, the question of the location of liquid bleaches in your stores. Where are they generally stocked, on the shelves? A. Liquid bleaches are normally stocked in the section close to starches, waxes, other household supplies. It is usually in the same general area of the store as soaps and liquid and dry detergents but it is not normally adjacent to it.

Q. Incidentally, on this subject of shelf space and shelf location, Mr. Eubanks, in the Kroger Supermarkets is a part

(Tr. p. 4600)

of the overall inventory which you have in the store located in the front or selling part of the store?

* * * * *

A. Yes, we normally carry in the front of the store, the selling area of the store, stock to sell to the public.

Marvin J. Eubanks—Cross

In the back end of the store, the storeroom or back-room whatever you want to call it, we carry what we call back-up stock as it is needed.

By Mr. Pride:

Q. In the grocery business, this stock that is carried in the selling part of the store, is it referred to as forward inventory? A. Yes, sir. It has been so referred to.

Q. On the basis of your experience and on the basis of your position with the Kroger organization is this forward inventory of any product a fair measure of the shelf space allocated to the product?

A. Yes, the stock that we have in the front end of the store is our inventory of liquid bleach on the shelves for the most part.

(Tr. p. 4612)

CROSS-EXAMINATION

By Mr. Tincher:

(Tr. p. 4616)

Q. When we speak of your Chicago division, sir, is that metropolitan Chicago or just what is it? A. The Chicago division of the Kroger Company extends from Waukegan on the north to Aurora and Elgin on the west, Kankakee, Illinois, on the south, and Michigan City, Indiana, on the east.

Q. Do you recall your price structure in general well enough to know, without giving me any exact price, that

Marvin J. Eubanks—Cross

(Tr. p. 4617)

Sav-A-Day is bought by your company for less money than you have to pay for Fleecy White and Linco and Clorox?

A. You say price structure. Do you mean cost or retail?

Q. Cost right now, sir. A. We pay less for Sav-A-Day than we do for Linco or Clorox.

* * * * *

Q. The two sizes of Fleecy White which you do carry, how do they compare in cost to you with the comparable two sizes of Clorox and Linco? A. I believe that we pay less for Fleecy White than we do for Linco or Clorox.

* * * * *

Q. All right, sir.

Will you tell us generally the same information with reference to your shelf prices for these four brands of liquid bleach? A. On Linco and Clorox—and here again I am speaking from memory, which is bad to do because there are many

(Tr. p. 4618)

items involved—I believe that our retail price on quart Clorox and quart Linco are the same—21 cents.

At the present time we have 37 cents a half gallon on Clorox, and 35 cents on Linco. On gallon Clorox we have 61 cents, and I am not positive of the price on the Linco gallons. I would like to look that up to be certain.

Prices do fluctuate, sir, on these items.

Q. I am just trying to get an average, the general run.

How about Fleecy White and Sav-A-Day? A. Our price on Sav-A-Day is less than either Linco or Clorox. Our retail prices on Fleecy White are less than on Linco or Clorox.

I believe in the case of quarts we have—on Fleecy White

Marvin J. Eubanks—Cross

quarts we have 19 cents, and Fleecy White half gallons we have 33.

Q. Have these price differentials—by that I mean the differences as you have just given them between different brands—have they been fairly steady during the entire period 1956-57? A. For the period that was in the exhibit here, they were steady. And in some cases, in the case of Clorox and Linco, much of that period of time they were the same.

Q. How do you determine those retail shelf prices, sir, on liquid bleach? A. Prices are normally determined by one of two things: by

(Tr. p. 4619)

mark-up factor for a given commodity group, based on its rate of sale, its turnover rate, plus the competitive situation in a given market.

* * * * *

(Tr. p. 4622)

Hearing Examiner Haycraft: Do you ever do this same reviewing you are talking about, family review, when someone approaches you and tries to get you to take on a new item in one of these groups, with the promise of advertising promotion and so on?

The Witness: When a new item is presented to us, if we feel that there is sufficient sales potential in it, then we will get together all of the facts about that item and get together the facts about all of its competing items. We will review both, one in the relationship to the other.

In other words, in the grocery stores today, because of the tremendous number of new items that are being offered to us, many of which are duplication of items we already have, we have to decide how much duplication we are go-

Marvin J. Eubanks—Cross

ing to have versus the variety that we could carry of these new items.

Hearing Examiner Haycraft: Do you take into consideration such factors as advertising promotion and all that?

The Witness: That is correct.

Hearing Examiner Haycraft: And also the character of the firm that is in back of it, so that you know whether or not he can carry out his promises?

The Witness: That is very true. Today we don't sell groceries any more; they are all bought from us.

(Tr. p. 4623)

Hearing Examiner Haycraft: In other words, the demand is created by the manufacturer?

The Witness: Yes, sir.

* * * * *

(Tr. p. 4629).

* * * * *

By Mr. Tincer:

Q. You said the liquid bleaches were close to the starches and waxes?

(Tr. p. 4630)

A. Yes.

Q. Is that a general household section of cleaning aids?

A. Well, it is the laundry auxiliary items or laundry accessories, the same place that you would find bluing and starch, the new products, Sta-Puf and Sta-Flo.

* * * * *

(Tr. p. 4631)

Q. Basing your answer on your experience with Kroger in Chicago, you recognize do you not that suppliers who

1303a

William M. Towers—Direct

have several products will join those products together in a promotion and obtain display space from you, for example, Kroger, for that promotion? A. They might join them together but that doesn't necessarily mean that we are going to display everything that they join together.

* * * * *
(Tr. p. 4637)

* * * * *
Room 532
Federal Trade Commission
Washington, D. C.
Monday, 24 November 1958

Met, pursuant to adjournment, at 9:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *
(Tr. p. 4638)

PROCEEDINGS

* * * * *
William M. Towers

was called as a witness for the Respondent and, having been previously duly sworn, testified further as follows:

DIRECT EXAMINATION

By Mr. Royall:

Q. Your name is William M. Towers and you are vice president and treasurer of the Clorox Company? A. That's correct.

Mr. Royall: Please mark this exhibit.

(The document referred to was marked Respondent's Exhibit 83, for identification.)

William M. Towers—Direct

Mr. Royall: Your Honor, we call attention to the fact that this particular document has, within red marks, an exact copy of Commission's Exhibit 402, which was introduced by the Commission.

(Tr. p. 4639)

It is incorporated in this because, as will appear later in the evidence, the other figures relate to it. I thought maybe the gentlemen representing the Commission might wish to check that to see if there is any difference of opinion about that accurately representing that Commission exhibit.

(Tr. p. 4640)

By Mr. Royall:

Q. In addition to the matters taken from Commission's Exhibit 402, what does Respondent's Exhibit 83, which I now hand you, purport to show? A. It shows the actual expenditures for the 11-month period August 1, 1957 through June 30, 1958 of the Clorox Company.

Q. And what else in general, without giving the specific figures? A. It also shows the number of cases sold in each of the periods shown, and it shows the advertising and promotional expenditure expense per case for each of the years and periods shown.

(Tr. p. 4641)

Mr. Royall: Your Honor, we offer that record in evidence.

William M. Towers—Vair Dire Examination

VOIR DIRE EXAMINATION

By Mr. Tincher:

(Tr. p. 4645)

Q. I am not an accountant. Do I interpret this document right that the advertising in the post-acquisition period has been at a considerably reduced rate than the pre-acquisition period, advertising and promotion? A. I wouldn't say that it had been at a considerably reduced rate. It is lower than the average of the five-year period ended June 30, 1956, and it is equal to the advertising for the fiscal year ended June 30, 1957, on a cents per case basis.

Mr. Tincher: Mr. Examiner, I submit this exhibit is completely worthless. I think, if you will notice, in the pre-acquisition period we know exactly what occurred because we know the amounts for cooperative advertising or which was changed later to the six cents a case allowance plan, whereas in the post-acquisition period that figure for some reason has been deleted.

(Tr. p. 4649)

Hearing Examiner Haycraft:

While I am inclined to agree with your contention, Mr. Tincher, I don't think it goes to the admissibility of the exhibit but to its weight.

I will allow Respondent's Exhibit 83 for identification in evidence.

William M. Towers—Direct

(Whereupon, the document referred to, heretofore marked Respondent's Exhibit 83 for identification, was received in evidence.)

* * * * *

(Tr. p. 4652)

DIRECT EXAMINATION (resumed)

By Mr. Royall:

Q. Mr. Towers, why does your computation not include cooperative advertising? A. We do not have cooperative advertising.

Q. I mean, for the preceding years. You have these figures on cooperative advertising. A. Yes.

Q. Why did you deduct those? A. We deducted them to get the exhibit on a comparable basis.

Q. Why were they not included within advertising and promotional expenditures? A. We do not consider DCM as part of our present-day advertising and promotional expenditures.

Q. And did you consider cooperative advertising as such? Did you consider cooperative advertising a part of your advertising promotion expenditures? A. No, I would say we did not. The advertising and promotional expenditures that we have included here in the 11-months' period are those over which we have control. It is money spent by the Company for advertising and promotion.

Hearing Examiner Haycraft: It looks to me like one of the changes made was at the time Procter and Gamble took over, and that the old firm did include it.

(Tr. p. 4653)

Mr. Royall: Your Honor, the testimony there shows that it was not to be included in the year—

William M. Towers—Direct

Hearing Examiner Haycraft: I also note that the 6 cents per case allowance plan was included under the old Company, but it was discontinued after Procter and Gamble took over as a part of advertising promotional expense.

The Witness: That is correct.

Hearing Examiner Haycraft: It looks like just a change in accounting. But in order to make the exhibits comparable, from the standpoint that we want to include all cooperative advertising as well as other types of advertising and the 6 cents a case allowance plan as a part of promotion, the exhibit doesn't disclose what that represents.

Mr. Royall: No, sir; it does not.

* * * * *

(Tr. p. 4654)

* * * * *

Q. Do you have, or can you supply figures for DCM for the period ending June 30, 1958? A. I can supply them. I don't have them with me.

Q. Do you have them in town? A. Yes, I have. I have the figure. I do not have any supporting evidence.

Q. But you could supply that, could you not? A. Yes, I could.

Q. How long would it take you to get that? A. Probably 15 or 20 minutes.

* * * * *

(Tr. p. 4658)

* * * * *

Q. Taking it on the basis that you have prepared this exhibit—refer to it, please—will you state in the record what the cost per case is for each of the years 1952 through 1958, advertising and promotional costs?

* * * * *

William M. Towers—Direct

A. The cost per case, given exclusive of administration

(Tr. p. 4659)

inasmuch as that is the only place where they are comparable, is for the fiscal year ended June 30, 1952, 19.5 cents per case; fiscal year ended June 30, 1953, 17.2 cents per case; fiscal year ended June 30, 1954, 18.6 cents per case; fiscal year ended June 30, 1955, 16.9 cents per case; fiscal year ended June 30, 1956, 16.1 cents per case; fiscal year ended June 30, 1957, 16.4 cents per case; July, 1957, 16.9 cents per case; and August 1, 1957 through June 30, 1958, 16.4 cents per case.

Q. There was some reference made in the so-called voir dire examination of the complainant that you added administrative advertising expense in the fiscal year 1958.

If that had not been added, would the cost per case in that year have been still lower?

* * *

A. No, I did not, in the figure I read. It was exclusive of administration in all periods so that it would be comparable.

Q. Would you then explain to me the questions he was asked about? In the far right two columns you have \$62,439; what is that?

A. That is Administration.

(Tr. p. 4660)

And the cost per case shown at the bottom of that column is on two bases: One, exclusive of administration and the other including administration.

Q. And they are reflected on there? A. They are. That is correct.

Q. The difference is 16.7 and with the inclusion of those, is that correct? A. That is correct.

* * *

William M. Towers—Direct

(Tr. p. 4661)

* * * * *

Mr. Royall: Your Honor, I would like this paper marked by the witness to be given an identification number.

Hearing Examiner Haycraft: Respondent's Exhibit 84.

(The document referred to was marked Respondent's Exhibit 84, for identification.)

* * * * *

(Tr. p. 4663)

* * * * *

Mr. Royall: In connection with Exhibit 84, your Honor, we refer you to one of the several references in the record to the figures of savings.

Hearing Examiner Haycraft: Savings of what?

Mr. Royall: Savings in discounts on radio, magazines, and television.

And on Page 3389, savings of \$500 in radio, \$50,000 in magazines, and \$86,000 in television, or a total of \$136,500, and \$2,000 in newspapers. That is \$138,500.

Hearing Examiner Haycraft: In Exhibit 84 does the word "discount" refer to that amount of \$138,500? Is that the figure you used?

Mr. Royall: That is the figure I used to him.

Hearing Examiner Haycraft: When you prepared this Exhibit 84?

Mr. Royall: Yes, sir.

Hearing Examiner Haycraft: Would you take your pen, Mr. Witness, and write above the word "discount," and put in a line showing that that is what you mean, \$138,500, so that we will know what the figure is.

(Tr. p. 4664)

Mr. Tincher: I thought it was \$140,000 on that page.

William M. Towers—Direct

Mr. Royall: I said approximately \$140,000. I was not trying to be exact, because the percentage wouldn't make any difference. I knew it was around that. And that has been referred to at least four or five times in the record, your Honor.

Hearing Examiner Haycraft: Exhibit 84 for identification is received in evidence in camera.

(Whereupon, the document referred to, heretofore marked Respondent's Exhibit 84 for identification, was received in evidence and ordered SEALED.)

* * * * *

Hearing Examiner Haycraft: The witness is excused, to go and get this paper that he has that will show the actual cooperative advertising of—what did you call that?

The Witness: DCM.

Hearing Examiner Haycraft: For the DCM plan for August 1957 through June 30, 1958, and twelve months ended June 30, 1958.

* * * * *

(Tr. p. 4668)

* * * * *

CROSS-EXAMINATION

By Mr. Tinch:

Q. Mr. Towers, did you find the figure the examiner requested you to find? A. I found the figure rounded to the nearest hundreds, if that figure is satisfactory. I did not have the figure carried out to the last dollar.

Q. Do you have that figure before you? A. Yes, I have.

Mr. Tinch: I would like to have the witness place that figure on the exhibit that is in camera, sir.

William M. Towers—Cross

Hearing Examiner Haycraft: All right.

Mr. Tincher: That is exhibit 83.

And please initial it after you do.

Mr. Royall: Will it be all right to put a ring around it, to show that it is not part of his testimony?

Hearing Examiner Haycraft: When you get it done I want to see it.

If you add the July, 1957, figure that you have in Exhibit 402, to the one that you have in Exhibit 83 under

(Tr. p. 4669)

column August 1, 1957 through June 30, 1958, would you have the correct amount which would go into the last column, 12 months ended June 30, 1958?

The Witness: Yes, you would, rounded to the nearest hundreds.

* * * * *

(Tr. p. 4674)

* * * * *

Hearing Examiner Haycraft:

* * * * *

I would like to have the witness—and I don't know whether he will ask him that question, or you, on redirect—I would like to have the witness's testimony as to what changes will be made in his cost per case if this additional figure is included.

Have you computed that?

* * * * *

By Mr. Tincher:

Q. Would you do that? A. I have computed it for the fiscal year ended June 30, 1956-1957, and then for the one-month period July, 1957, and the 11-months period ended June 30, 1958.

William M. Towers—Cross

(Tr. p. 4675)

Q. And you put that on the exhibit itself? A. No, I did not put it on the exhibit.

Q. Would you do so, please, sir.

* * * * *

The Witness: Cents per case?

Hearing Examiner Haycraft: Yes.

Mr. Tincher: Yes, the additional cents to be added.

Mr. Royall: And put a ring around it.

Do you want it added up?

Mr. Tincher: You can, if you want to.

(Tr. p. 4676)

* * * * *

Q. What does the item "miscellaneous" refer to? A. Miscellaneous is miscellaneous advertising and sales promotion not classified anywhere else.

Hearing Examiner Haycraft: Could you give an example?

The Witness: For one thing, we used to have—still do have, I think—these cards that we will send out occasionally that will entitle a person to a bottle of Clorox when they write in and offer a suggestion for the use of Clorox, or something. That expense is included in there.

Frankly, I can't think of anything right now, I am sorry. I just don't recall anything.

* * * * *

(Tr. p. 4677)

* * * * *

Q. All right, sir. Where would a reduction of income because of cents off on a special label appear as a promotion expense on this exhibit? A. Cents off? That is one item that is in "miscellaneous."

William M. Towers—Cross

Q. That is another on Miscellaneous? A. Yes, that is true.

Q. I notice quite a jump on promotional materials. Will you explain the reason for that increase? A. The promotional material figure that we show as indicated also includes the extra special packing costs on the various promotions during the period.

Q. That would be, once again, for example, the cents off on the special label? A. It would be the extra factory costs involved in the

(Tr. p. 4678)

cents off, that is correct. Extra label costs, extra packaging costs, if any.

Q. Does this exhibit include the amounts paid for redemption of premiums in the spring 1958 Clorox drive? A. These are self-liquidating premiums that you are speaking of, I believe. If there were any net difference, it would include that, yes.

Q. And there was such a difference, was there not, sir? I will ask you to look at your supporting records for corroboration of that. A. Yes, there is a difference. However, this may or may not be entirely attributable to the fall and spring promotions. The Los Angeles dish cloth premium would also be in here.

Q. When was that promotion, sir?

The Witness: That was May 1958, and the cost would be included in this figure.

(Tr. p. 4679)

By Mr. Tinch:

Q. That is when the drive started in Los Angeles on this premium? A. Yes.

William M. Towers—Cross

Q. Let me ask you, sir, the amount that your records show as being a cost for premiums, is that an amount that was paid after the Clorox Company received from Procter and Gamble the money that the housewives had sent in for the premiums?

* * * * *

(Tr. p. 4680)

* * * * *

A. I understand your question now.

Actually this premium expense is net of the cost of the premium less the amount that was received in purchasing of those premiums, the redemption of those premiums.

Q. Does this exhibit include only domestic sales, or does it include sales overseas and in Canada as well? A. It includes all sales.

Q. Is that true for all the years here? A. Yes it is.

Q. Does this include advertising and promotional expense overseas and in Canada as well as in the United States? A. Yes it does.

Q. For all the years? A. For all years.

* * * * *

(Tr. p. 4681)

* * * * *

REDIRECT EXAMINATION

By Mr. Royall:

* * * * *

(Tr. p. 4683)

* * * * *

Harry Nickelson

was called as a witness on behalf of the Respondent and, having been first duly sworn, testified as follows:

Harry Nickelson—Direct

DIRECT EXAMINATION

Hearing Examiner Haycraft: Harry Nickelson? Where do you live?

The Witness: 434 Ridge Road, Highland Park, Illinois.

Mr. Royall: Your honor, the subpoena against Mr. Nickelson was withdrawn, or is now being withdrawn, I suppose is more accurate. I think the reason is probably known to your honor.

(Tr. p. 4684)

He is appearing voluntarily because the Nielsen Company has always taken the position that this is confidential information and he can't be forced to give it. In order to keep his record clear, his personal record clear, we followed that procedure. I believe Government Counsel had the same situation presented to them when they were considering it.

* * * * *

By Mr. Royall:

Q. What is your occupation, Mr. Nickelson? **A.** I am a Vice President of the A. C. Nielsen Company.

Q. And where is that located? **A.** 2101 Howard Street, in Chicago.

Q. And what is its general business? **A.** We gather facts which originate as we conduct audits in food and drug stores; and in addition we have our broadcast division which measures the listening to radio and viewing of television and other special research activities.

Hearing Examiner Haycraft: That is known as the Nielsen ratings?

The Witness: Yes, it is.

By Mr. Royall:

Q. What position do you hold with the company?

Harry Nickelson—Direct

(Tr. p. 4635)

A. I am a Vice President of that company.

Q. And how long have you been associated with it?

A. Since 1941.

Q. How long have you been Vice President? A. Since November 1954.

Q. What are your duties and responsibilities in your present position? A. I am in charge of sales and service for the food-drug division for Central United States. That is the area covered from Buffalo to roughly Atlanta, to Texas, to Denver.

Q. Does your service, that is the Nielsen service, include grocery store items moving directly to customers through door to door distribution? A. They do not.

Q. It is confined to those moving through the grocery stores, is that right? A. Grocery stores plus country general stores plus delicatessen, but not moving direct to consumers.

Q. Does it include the sale of bleach to laundromats? A. It does not.

(Tr. p. 4711)

By Mr. Royall:

Q. Do the Nielsen figures include for Purex any private

(Tr. p. 4712)

label brands that they sell?

The Witness: The Purex figures which are shown on the Purex brand label include only Purex. They do not include any private label or control label merchandise. The controlled label or private label merchandise would be in

Harry Nickelson—Direct

the total, but not in the Purex, not under the Purex brand information as designated in any of these reports.

This is our standard operating procedure.

They would be a part of the "all others."

(Tr. p. 4713)

Q. State whether or not it necessarily follows from that that if Purex does manufacture private labels in these territories and sells them, that the total share of liquid bleach manufactured by Purex is understated.

A. The Purex figures that we have do not reflect private label business, and therefore they are not a proper recording of the total company sales for Purex, merely this portion of it that is sold under the brand name of Purex.

(Tr. p. 4715)

Q. Mr. Nickelson, in your survey of the territory in which Erie, Pennsylvania, is located, do you take a count and acquire information as to a store in Erie, Pennsylvania?

A. We have a store in Erie, Pennsylvania, which is a part of our regular sample stores used in securing all of our standard Nielsen data.

Q. Does Exhibit RX-88 show the market share of certain companies in that store for the period from April 1957 through March 1958?

A. It shows the brand shares, not company shares.

(Tr. p. 4716)

Q. Brand shares? A. For Clorox, Purex, and the

Harry Nickelson—Direct

all others combined for that one store over that period of time.

Q. Was this information acquired in the regular survey and not by any special request of anyone? A. The information was gathered as part of our regular reporting, and no special survey.

Mr. Royall: Your Honor, we offer this in evidence. I would like to make a statement about it when I offer it. This represents one store in Erie.

May I pause and ask him a question?

By Mr. Royall:

Q. What type store is it? A. This is a medium independent store.

Q. It is not one of the large or one of the small ones? A. That is right.

Hearing Examiner Haycraft: Is it a chain store?

The Witness: It is not a chain store. It is an independent.

Mr. Royall: Your Honor, while it represents only one store, it was a store selected by Nielsen, whose efficiency and accuracy has at least been pretty well endorsed in this proceeding. It was a store regularly used as a part of the audit which they prepared. It is a medium-sized store, at neither extreme. And it is the only information which is

(Tr. p. 4717)

available, so far as we have been able to find, from a totally independent survey not prepared at the request of any interested person.

It represents, your Honor, the only statistical method possible to us to answer the government's Exhibit 450. We can not now make a retroactive survey—and could not at the time that was introduced—make a retroactive survey in any way.

Harry Nickelson—Direct

We can realize that there may be arguments as to its weight, but we believe that under the special circumstances of this case that this exhibit should be admitted.

* * * * *

(Tr. p. 4718)

* * * * *

Hearing Examiner Haycraft: The objections are pretty well presented. But I believe that, under the circumstances, it will go more to the weight to be attached to the exhibit than it will be to the admissibility of it. It is just as if you had gone into that one store and said we take these figures. There is no way of knowing whether or not it is typical. As pointed out by counsel in support of the complaint, it will probably force him to get the actual figures of sales into that area to see which one of these exhibits, if either one of them, are any good.

Without looking at it, I will receive it in evidence for whatever weight it may have. I don't believe it is very

(Tr. p. 4719)

good, but I will take it.

Mr. Royall: May this be received in camera?

Hearing Examiner Haycraft: Yes.

(The document referred to, heretofore marked Respondent's Exhibit 88 for identification, was received in evidence and ordered SEALED.)

* * * * *

(Tr. p. 4720)

* * * * *

Mr. Royall: Will you mark this for identification, please, as Respondent's Exhibit 89.

(The document referred to was marked Respondent's Exhibit 89, for identification.)

Harry Nickelson—Direct

By Mr. Royall:

Q. Mr. Nickelson, I hand you Exhibit RX 89, and ask you if that was prepared from data which appears in the two regular volumes of your reports that are in evidence?

A. Yes.

Mr. Royall: Your Honor, this relates to the sales of Purex during two specific 12-months periods, October, 1955 to September, 1956, and October, 1956 to September, 1957.

* * * * *

(Tr. p. 4727)

* * * * *

Mr. Tincer: I move to strike that, sir, as going beyond the stipulation of the parties in Los Angeles.

Hearing Examiner Haycraft: No, it is not covered by the stipulation.

The stipulation was sufficiently broad, in my

(Tr. p. 4728)

judgment, to allow this exhibit.

It is intended to contradict or explain, rather, or take a part of 462 which they wish to emphasize. It is quite apparent from the cross-examination of Mr. Stoneman by Mr. Royall that he was laying the foundation then for what he is putting in now.

* * * * *

(Tr. p. 4729)

* * * * *

Mr. Royall: This exhibit is offered to show that for the year prior to October 1, 1956, the share of Purex was greater than it was in the year following that shift.

Hearing Examiner Haycraft: What does that prove?

Mr. Royall: It proves that their share of the business went down after they changed back to direct salesman.

Harry Nickelson—Direct

Hearing Examiner Haycraft: You can't pin all that on the change. You don't know what caused it to go down. There may have been some competition there.

Mr. Royall: There may have been, but they offered it and I am sure this will appear from the reading of the record. I don't know what pages. It was offered for the purpose of showing that salesmen were an advantage over distributors, and we are trying to meet that headon.

Hearing Examiner Haycraft: I haven't received any exhibit that I know of on that basis because I don't consider that an issue in this case.

Show me in the complaint where that is an issue.

Mr. Royall: The complaint speaks in broad terms, but certainly there is no question they contend that the salesmen were preferable, and that Purex was an example of it.

Hearing Examiner Haycraft: That depends on what is said.

(Tr. p. 4730)

Mr. Royall: I think it does, too. If they abandon that contention this wouldn't be any trouble. But I don't think they are about to abandon it.

Hearing Examiner Haycraft: I think I can help you a little bit by abandoning it for them. I am not going to make any finding based on any testimony as to which is a better method, based on the Purex experience. I am not going to let that get to be an issue in this case so you won't have to meet it.

That is getting off into a collateral by-pass; there are so many things can enter into a change from one system of distribution to another that it would have no bearing on the issues in this case.

I am satisfied that if I allow this exhibit in that the next hearing in rebuttal they probably will want to run

Harry Nickelson—Direct

this down to a later date to see whether or not they have recouped themselves, or whether they could have recouped and gone back into a better percentage based on a number of other things.

So, I think that the question of what experience Purex may have had on whether they sell through brokers or through salesmen has no bearing whatever on the issues in this case. If there is anything in there that has been offered for that purpose, I didn't know it. But I am certainly not going to allow this exhibit because we are

(Tr. p. 4731)

getting into a controversy that I don't want involved. There are too many factors enter into it which are foreign to this case. I am rejecting the exhibit.

(Tr. p. 4736)

Room 532
Federal Trade Commission
Washington, D. C.

Tuesday, 25 November 1958

Met, pursuant to adjournment, at 9:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

(Tr. p. 4737-A)

PROCEEDINGS

Harry Nickelson

resumed the stand as a witness for the Respondent and, having been previously duly sworn, testified as follows:

Harry Nickelson—Direct

DIRECT EXAMINATION (resumed)

Mr. Royall:

* * * * *
(Tr. p. 4757)
* * * * *

Mr. Royall: Your Honor, this testimony that has been adduced, it appears has been related to the period covered by the stipulation and by the evidence which the complainant has put in. We do not intend to depart from that or waive any rights or violate any period that has been made out in the complainant's case.

We announced before we started that we intended to

(Tr. p. 4758)

try this on the complainant's proof, that is, on the facts covered by the complainant's proof.

However, as Mr. Tincher brought out, and as we are going to bring out, there is data after that date on many subjects.

We have this thought to throw out to your Honor. We are not going to offer any evidence beyond that date. We are going to object to anything that goes beyond that date in accordance with the record. But we would be willing to discuss with your Honor and with counsel off the record additional data which we have available to us.

I am making this statement, your Honor, because we don't want to be put in the position of seeming to hold back anything, even though we have a legal right to do it, without a discussion with your Honor and counsel.

Specifically we have some data that we would like to, or be willing, at least, discuss if your Honor and counsel thought that that would be worthwhile, but we do not want it on the record because we are going to adhere to that unless there is a decision otherwise.

Harry Nickelson—Direct

Hearing Examiner Haycraft: Suppose you submit the data to counsel in support of the complaint and see what he has to say about it; see whether he would be willing to stipulate that that should be included or if he would prefer to leave it out.

(Tr. p. 4759)

* * * * *

Mr. Tincher: I thought your Honor would take evidence right up to the date of the hearing.

Hearing Examiner Haycraft: Certainly I will but that doesn't change the stipulation that you may have with counsel.

Mr. Royall: The reason I bring it up now is because Mr. Nickelson is going, after his cross-examination is over, and that is the reason I brought it up at this time.

I am not urging this. I am just saying we are willing.

Mr. Tincher: I will say if we have a complete Nielsen, rather than these selected things from Nielsen, we will be very happy to look at it.

Mr. Royall: Do I gather from that that counsel is not interested in discussing?

Mr. Tincher: I am interested in seeing a complete Nielsen, not selected portions of it.

Mr. Royall: You don't know whether this is a selected portion or not.

(Tr. p. 4760)

Hearing Examiner Haycraft: I would suggest that you at least see what it is that he has before you make a statement about it.

Mr. Royall: Your Honor, we are not urging it a bit. We would rather stop just where the record shows. But I want to be fair about this thing. If they don't want to see it that ends it.

Harry Nickelson—Direct

Mr. Tincer: All I can say, sir, is that we can't have the burden shifted to us about whether somebody comes forward with the evidence or not. We can just stand mute on that subject.

Mr. Royall: I wonder, in order to save—in case there should be a change of mind on that—I wonder if I would be within my rights—I don't want any special privilege—of having a number given to this, your Honor, and have it designated as a number, and then not disclose it to anybody unless these gentlemen—not put it in the record. If I identify it, am I under any obligation to show it to anybody or put it in the record?

Hearing Examiner Haycraft: No, you are only obligated to show it if you offer it.

Mr. Royall: We would like this marked for identification, your Honor.

(The document referred to was marked Respondent's Exhibit 94, for identification.)

* * * * *

(Tr. p. 4762)

* * * * *

Mr. Royall: I would like this document marked for identification.

(The document referred to was marked Respondent's Exhibit 95, for identification.)

Mr. Royall: This, your Honor, is a special report prepared for Procter and Gamble on forward inventories against sales relationship for the period October-November, 1957. This is not, your Honor, one where the material comes completely from the regular Nielsen reports.

By Mr. Royall:

Q. I hand you Exhibit 95 for identification, Mr. Nickel-

Harry Nickelson—Direct

son, and I ask you to explain what it represents, and who employed you and what you did?

(Tr. p. 4763)

A. This special analysis was ordered by the Procter & Gamble Company to appraise the forward inventories in total and in product class share of total to consumer sales.

In order to get this information we had a special tabulation of the audit forms which contain a separation of the forward inventories, that is, the inventories in the selling area of the store versus the remainder, which would be essentially the back-room stocks.

These audits of the forward versus reserve inventories are made in connection with all of our audits, but they are not all tabulated. They are tabulated only on special request, and when a client wants to appraise the forward versus reserve inventory, when they have a special problem in that connection:

The data on forward inventories are shown both in terms of dollars and in terms of ounces and consumer sales are also shown in terms of ounces.

It is my opinion that the ounces are the best means of comparison because you have a common denominator in which you can put both sales and inventories. If we are to use dollars the inventories are priced at one level and the consumer sales are priced at another level. That is, the inventories priced at cost and the consumer sales at the retail selling price. Therefore, the dollars are not the same.

(Tr. p. 4764)

So I think we can confine our comparisons here to the figures showing ounces of forward inventories and consumer sales.

Harry Nickelson—Direct

Is that a complete answer to your question?

* * * * *

Hearing Examiner Haycraft: I didn't understand where you got the inventory information?

The Witness: The forward inventory information?

Hearing Examiner Haycraft: Yes.

First, tell me what a "forward inventory" is.

The Witness: Forward inventory is that inventory which is located in the front portion of the store, or in the selling area of the store, as differentiated——

Hearing Examiner Haycraft: On the shelf?

The Witness: On the shelf or in bins or——

Hearing Examiner Haycraft: I understand that now.

The Witness: (Continuing) ——or in displays as compared with back-room stock. In other words, this is the goods on the shelf.

Hearing Examiner Haycraft: Where did you get that?

The Witness: As a part of our standard audits, your Honor, our auditors record the inventory in the forward selling area of the store in a different place than they record the inventory in the back room. Since it is so

(Tr. p. 4765)

recorded by a special tabulation we can produce the inventories for the forward portion of the store.

Hearing Examiner Haycraft: In other words, you collected the information although you did not publish it?

The Witness: We collect it on all reports but this is not a part of our standard Nielsen report. It is tabulated only when it is requested by a client. And, incidentally it carries a separate charge.

* * * * *

Q. In other words, that audit is taken in the regular course of your business? A. Yes, it is.

Harry Nickelson—Direct

Q. And the audit on which these figures are based was not taken at the special instance of Procter and Gamble, the audit itself? A. No. This is a standard type of report which is ordered.

(Tr. p. 4766)

by all of our clients in appraising the forward inventory versus reserve stock and relating it to sales.

Q. And do clients from time to time ask for reports of this nature from you? A. Yes, sir. And we bill them for it as an extra.

Q. This includes not only the shelf space of Clorox, but also the shelf space of Procter and Gamble's principal products in these categories; is that correct? A. That's right.

Q. And of all the package detergents, the universe is all the package detergents in that category and all of the products in the other categories? A. That's right, sir.

(Tr. p. 4776)

Q. Is Comet the fastest moving product of Procter in the cleanser field? A. It is the only Procter and Gamble product in the cleanser field.

Q. Is Clorox a fast-moving product?

(Tr. p. 4777)

A. Compared with other products in the field, it is. It is fast moving by comparative standards.

(Tr. p. 4778)

Hearing Examiner Haycraft: I am not impressed by

Harry Nickelson—Direct

that. I am impressed by the fact that it is not a complete study.

I think for that reason I am going to have to reject the exhibit. If you had this complete; that is, all of the Procter and Gamble products in each one of these classifications, then I think probably I would receive it.

(Whereupon, Respondent's Exhibit 95 was rejected.)

Mr. Royall: Comet's are the only product in that, of Procter and Gamble, and Clorox, the only one in the liquid bleach—

Hearing Examiner Haycraft: I can see where three would be.

Mr. Royall: And the other two are rejected?

Hearing Examiner Haycraft: Yes.

* * * * *

(Tr. p. 4779)

* * * * *

Hearing Examiner Haycraft: You have your objection and I have ruled on it.

I have granted it as to the first two columns, the first two items or categories, the package detergents and toilet soaps. I have not granted it at this time at least on Comet and Clorox. We will see now what comes out of it, see how he makes the comparison. I don't know what the basis of this is. But at least you have it reduced to items which are the Procter and Gamble items.

* * * * *

(Tr. p. 4780)

* * * * *

By Mr. Royall:

Q. What was Comet's percentage of shelf space based on ounces? A. 21.2 percent of the product class total.

Harry Nickelson—Direct

(Tr. p. 4781)

Q. What is Comet's share of the market on consumer sales? A. 28.4 percent during October-November, and this is on ounces the same as the share of shelf space.

Q. In other words, 21.2 for shelf space, 28.4 for sales?

A. Yes, sir.

* * * * *

Hearing Examiner Haycraft: Until I understand it, it keeps bothering me.

As I understand it, is there any relation or any significance between your 21.2 and your 28.4? That is, the 21.2 being the share of product class in the forward inventory, and the 28.4 percent being the consumer sales. Does that indicate the movement of the product?

The Witness: The share of sales does, your honor. This says that Comet's share of shelf space is less than its share of consumer sales.

Hearing Examiner Haycraft: In other words, it is selling beyond its shelf space allocation?

The Witness: Exactly.

Hearing Examiner Haycraft: And the movement would justify a larger shelf space? Is that it? If you were allocating it on movement?

(Tr. p. 4782)

The Witness: If you were allocating shelf space on the basis of movement, yes, sir, it would deserve more shelf space.

* * * * *

By Mr. Royall:

Q. What is the situation as to shelf space and movement as to Clorox? A. Clorox accounts for 45.2 percent of

the ounce sales, and this is during October-November; and 39.2 percent of the shelf space.

Harry Nickelson—Direct

Hearing Examiner Haycraft: In other words your testimony as to that would be the same in the relation between those two figures as it would as to Comet?

The Witness: Yes, it would.

Mr. Royall: Please mark this for identification.

(Tr. p. 4783)

(The paper referred to was marked Respondent's Exhibit 96 for identification.)

(Tr. p. 4784)

By Mr. Royall:

Q. Mr. Nickelson, there has been testimony in this record relating to the location of liquid bleach in grocery stores. Have you, at the request of the respondent, made a special report and made a special investigation for determining the stock location of liquid bleach in grocery stores? A. Yes, we have.

Q. That was not taken from your regular investigation or covered by your regular report, was it? A. That is right, sir. We issued a special questionnaire to all of the men who make audits in the stores for the purpose of finding out where the liquid bleach stocks were located.

Q. This does not tie in in any way with the Nielsen reports that are in evidence up through November 1957, does it? A. The figures contained therein do not show in any of the regular standard reports, but the data are secured from exactly the same sample stores, and the projection techniques used to develop these statistics are exactly the same as are used for the regular reports.

Q. But done for a special purpose on a special order, is that correct? A. Yes, sir.

Q. But it was done during the period you were making your regular routine audit

Harry Nickelson—Direct

(Tr. p. 4785)

A. Yes, sir.

Q. And by the same personnel? A. Yes, it was.

Q. However, this exhibit does not relate in any way to share of market, does it? A. No, it doesn't.

Q. It has no connection with the data which is in up to December 1957? A. That is right.

Q. Will you describe the method that was used in determining the data carried in Exhibit 96, and describe what supporting data or papers you have for it?

* * * * *

A. We designed a questionnaire which we sent to the men who are auditing every one of the regular stores used to produce this regular report. They were to answer the question as to whether or not liquid bleaches were stocked

(Tr. p. 4786)

adjacent to or intermingled with package detergents or toilet soap, or whether they were stocked elsewhere in the store.

* * * * *

Hearing Examiner Haycraft: According to what you have just said, could they answer three ways?

The Witness: It was a two-way answer. If they were adjacent to or intermingled, if this was yes it was yes on either basis.

* * * * *

A. (continuing) After we got the questionnaires in our Chicago office, we tabulated them in the normal procedure, giving each of the various store types their proper weighting in the projection. That is why it was important to use a regular standard sample, which is a good cross section of all grocery stores, and we could use the standard projection techniques in order to arrive at these data.

Harry Nickelson—Voir Dire Examination

(Tr. p. 4787)

By Mr. Royall:

Q. Do those questionnaires constitute the basic document on which this is prepared? A. That is right.

* * * * *

 (Tr. p. 4788)

Mr. Royall: Your Honor, the purpose of this exhibit I think has been made clear, the general purpose, and appears on the cover which reads as follows: "Special

(Tr. p. 4789)

report prepared for Procter and Gamble on stock locations of liquid laundry bleaches." We offer it in evidence, your Honor.

* * * * *

VOIR DIRE EXAMINATION

By Mr. Tincher:

* * * * *

 (Tr. p. 4790)

Q. I notice a column here, "Immediately adjacent to package detergents or toilet soaps." What does "immediately adjacent" encompass? A. When they are on the same shelf next to package detergents, when they are on the same shelf immediately below package detergents or toilet soaps—I shouldn't say on the same shelf, but in the same area immediately adjacent, the same area below package detergents and toilet soaps, or in the same area immediately above package detergents or

(Tr. p. 4791)

toilet soaps.

Harry Nickelson—Cross

Q. In the situation where you had package detergents and soaps, and then a row or maybe ten rows of Spic and Span, or some product such as that, and then liquid bleach starts, where would liquid bleach be included then on this exhibit? On the column "Elsewhere in the store"? A. By definition, they would be "Elsewhere in the store."

Q. And if the liquid bleach were in the gondola directly across the aisle from the package detergents and soaps, would they also be in the category "Elsewhere in the store"? A. If I recall correctly, they would be.

* * * * *

(Tr. p. 4792)

* * * * *

Hearing Examiner Haycraft: Respondent's Exhibit 96 is received in evidence.

(Whereupon, the document referred to, heretofore marked Respondent's Exhibit 96 for identification, was received in evidence.)

* * * * *

(Tr. p. 4793)

CROSS EXAMINATION

By Mr. Tinch:

* * * * *

Q. With reference to Respondent's Exhibit 88, which is in camera—and I will hand it to you at this time—that is the exhibit concerning the grocery store in Erie, Pennsylvania—from your experience with Nielsen wouldn't you be one of the first to say that you can't tell about a city or a county from having that sort of information from one grocery store located in that city or county? A. I would agree, Mr. Tinch, that we nor anybody else could

Harry Nickelson—Cross

assure this Court that this store is typical of the Erie market. All we can testify for is that this actively represents the situation in this one store.

Q. I have a couple of general questions, sir, about Nielsen in general.

I think there are approximately 1600 stores in your survey, aren't there? It fluctuates? A. That is approximate; that's right. Once in a while we get thrown out, or a store burns or we change the sample but it is an approximate average.

Q. Do these stores know and realize that they are in the Nielsen survey? A. Well, naturally they know we are in the store. It is

(Tr. p. 4794)

my opinion very few of them know what we are doing or what we use the information for.

Q. They just know it is a Nielsen survey? A. That's right; without knowing what we are doing, or the specific products which we audit.

Q. Are these supposed to be confidential? Nobody is supposed to know what stores? A. We do not tell the Procter and Gamble Company nor any of our other clients, nor anyone, the names and addresses of our stores.

* * * * *

(Tr. p. 4802)

* * * * *

Q. With reference to Respondent's Exhibit 95, this comparison between Comet and Clorox and the forward inventory and consumer sales, would you tell us—and I missed this—would you tell us what this forward inventory is?

(Tr. p. 4803)

* * * * *

Harry Nickelson—Cross

The Witness: The figures shown in that table on forward inventories designate the amounts of inventory that are in the forward selling area of the store. The specific figures which are most directly comparable, that is, forward inventory versus sales, are expressed there in the common denominator of ounces.

You can't take units or any other measurement because units aren't exactly the same. You would be comparing one brand with one average size of units and another brand of another size of units.

Therefore, computations were converted to ounces in making these calculations. But it represents an audit of the inventories located in the selling area or the forward area of the store.

These audits of inventories are a part of every single audit that is made for all product groups. It was not a special audit. But it was a special tabulation in order to get the forward inventory portion pulled out of the total inventory which is a part of all standard reports.

(Tr. p. 4804)

By Mr. Tincher:

Q. And the total inventory would include the back room or store room? **A.** Yes, sir. The inventories which are included in the standard report book include all inventories without regard to their locations that are in the store.

Q. Your instructions on this exhibit, as I understand it, was just to get the forward inventories? **A.** Forward inventories only, that's right, sir.

* * * * *

(Tr. p. 4816)

* * * * *

Marco F. Hellman—Direct

Hearing Examiner Haycraft: The last question, as I get it, was Sani Clor did not appear in October-November in the Pacific territory, and you asked whether that meant they were out of business or what.

The Witness: Let me clarify the record on that score.

This does not mean that Sani Clor wasn't sold in the Pacific territory. We were not commissioned to break it

(Tr. p. 4817)

out as part of this report.

* * * * *

(Tr. p. 4823)

* * * * *

Marco F. Hellman

was called as a witness on behalf of the Respondent and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Hearing Examiner Haycraft: State your name and address for the record.

The Witness: Marco F. Hellman, and my residence address is 3515 Pacific Avenue, San Francisco.

Hearing Examiner Haycraft: Go ahead.

By Mr. Royall:

Q. Mr. Hellman, what is your occupation and with what company, if any, are you connected? A. I am the senior partner of J. Barth and Company, a San Francisco brokerage and investment banking firm.

Q. How long have you been with them? A. I have been with them since June of 1946.

* * * * *

Marco F. Hellman—Direct

Q. Are you acquainted and have you been acquainted with Mr. Roth and Mr. Feigenbaum of the old Clorox Chemical

(Tr. p. 4824)

Company? A. I have known Mr. Feigenbaum practically all my life, and I have known Mr. Roth since I went into J. Barth and Company, or shortly thereafter.

Q. Has J. Barth and Company been active in distributing and dealing in Clorox stock, Clorox Chemical stock?

A. Yes, sir.

(Tr. p. 4829)

Hearing Examiner Haycraft: What is your contention? What are you going to argue to me? Are you going to say that Procter and Gamble allowed more than they should have for that goodwill?

Mr. Tincer: I am going to say that the goodwill and trademark was worth the difference between \$80.3 million and the value of the assets.

Hearing Examiner Haycraft: That is your contention?

Mr. Tincer: Yes, sir. That doesn't say they paid more than they should have or less than they should have.

Hearing Examiner Haycraft: As I get it, you are saying that it was neither way?

Mr. Tincer: That is right. I don't think it is material or relevant.

Hearing Examiner Haycraft: On that basis, Mr. Royall, if he is not going to make the contention that you paid too much for the business of Clorox, why should we worry about it?

Hearing Examiner Haycraft: I have myself on

Marco F. Hellman—Direct

(Tr. p. 4830)

record here. I have asked the question and I will tell you now that based on the evidence that is in the record, and what he just now said, I am not going to allow any such argument, I am not going to make a finding of that kind.

* * * * *

(Tr. p. 4832)

* * * * *

By Mr. Royall:

Q. Were you closely in touch with the situation at the time that the transaction was completed?

Mr. Tincher: Objection.

Hearing Examiner Haycraft: Go ahead.

A. Yes, sir.

By Mr. Royall:

Q. What price was old Clorox asking of Procter and Gamble?

Mr. Tincher: I object.

A. On my recommendation they asked a price of 9 shares of Procter and Gamble for every 10 shares of old Clorox.

By Mr. Royall:

Q. Were there negotiations about it?

Mr. Tincher: I object. May I have a continuing objection without saying it?

Hearing Examiner Haycraft: Yes. And I will rule later. A. There were negotiations and the final deal was consummated on 8½ shares for 10.

By Mr. Royall:

Q. Did you at that time make a memorandum as to the method of arriving at that ratio of 8½ to 10? A. Yes, sir; I did.

Marco F. Hellman—Direct

(Tr. p. 4833)

Mr. Royall: May I have this marked for identification, please?

(The document referred to was marked Respondent's Exhibit 97, for identification.)

By Mr. Royall:

Q. Is this that memorandum? A. Yes, sir; it is.

Mr. Royall: I offer that in evidence, your Honor.

Mr. Tinch: I object.

Hearing Examiner Haycraft: Let me see it.

Go ahead.

By Mr. Royall:

Q. State whether or not this method shown on Exhibit 97 is an accepted method of estimating the exchange value of two corporations which are merging or engaged in acquisition? A. Yes, sir; it is the most accepted practice to use dividends and earnings.

Q. Based upon your experience, was the price paid for old Clorox by Procter and Gamble a fair price? A. Yes, sir. If anything, it was lower than I recommended in the first place.

Q. Do you mean Procter and Gamble paid a lower price than you— A. That's right, a lower price than I recommended originally.

(Tr. p. 4834)

Q. In transactions of this character, based on your experience, is book value considered to represent the fair selling price of a going concern? A. No, sir; it does not. There are many cases where businesses are sold at less than book value on account of low earnings, and there are other cases where companies are sold at many times book value.

Alvin A. Bissmeyer—Direct

Q. Are earnings and dividends the principal factors?

A. Yes, sir; they are.

Q. Do you know who initiated as between Procter and Gamble and Clorox, who initiated the matter of merger?

A. Yes, sir. I had the original thinking on it—

Q. On behalf of Clorox? A. On behalf of Clorox.

Mr. Royall: That is all, your Honor.

Hearing Examiner Haycraft: I have allowed these questions over the objection of counsel in support of the complaint. I will now entertain a motion to strike.

* * * * *

Mr. Tincher: We move to strike.

Hearing Examiner Haycraft: Motion granted.

* * * * *

(Tr. p. 4836)

* * * * *

Alvin A. Bissmeyer

was called as a witness on behalf of the Respondent and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Hearing Examiner Haycraft: Will you state your full name and address?

The Witness: Alvin A. Bissmeyer. The address is 2025 Peachtree Road, Atlanta, Georgia.

By Mr. Royall:

Q. Mr. Bissmeyer, what is your occupation and with what organization do you work? A. I am the general grocery buyer for Colonial Stores, Inc.

Q. How many stores do you have? A. Approximately 465.

Alvin A. Bissmeyer—Direct

Q. Where are they located? A. The stores are located in the states of Ohio, Indiana, Kentucky, Tennessee, Georgia, Alabama, North Carolina, South Carolina, Maryland, Virginia, and northern Florida.

* * * * *

Q. How many are supplied from the Atlanta warehouse? A. 102.

(Tr. p. 4837)

Q. And how many from the Thomasville, Georgia warehouse? A. 50.

Q. And how many from the Northern Virginia warehouse? A. 82.

Q. How long have you been in the grocery business yourself? A. Since 1931.

Q. I believe you are a general grocery buyer for Colonial. What are your duties? A. Well, as general grocery buyer I am responsible for the buying and the merchandising of all grocery products.

* * * * *

Q. Is it also your responsibility to determine in what stores what items will be marketed? A. Yes, sir.

Q. Does Colonial sell a private brand, so-called, private brand household bleach?

(Tr. p. 4838)

A. Yes, sir, we do, in some stores. Not all.

Q. And what is the name of it? A. Southern Manor Spotless.

Q. You say that is sold in some of your stores? A. That's right.

Q. Where is this manufactured and by whom? A. Well, the bleach that is sold in the stores supplied out of the Atlanta and Thomasville, Georgia warehouse is manufactured by the Purex Corporation Branch in Atlanta,

Alvin A. Bismeyer—Direct

and the bleach that is sold under the private label in Norfolk, Virginia area, the store service from that warehouse, is purchased from the Blue Magic Company in Wilson, North Carolina.

Q. Wilson? A. Yes, sir.

* * * * *

(Tr. p. 4839)

* * * * *

Q. In what sizes is Southern Manor bleach now sold?
A. Just in quarts.

* * * * *

Q. Do you know how many quarts you sold in 1956?

* * * * *

The Witness: In 1956 it amounted to 65,784 quarts.

By Mr. Royall:

Q. How many in 1957? A. In 1957 it was 76,392 quarts.

Q. How about in 1958 up to this time? A. Up to and including November 15 we had sold 179,748 quarts.

Mr. Tincher: Is this private labels?

(Tr. p. 4840)

The Witness: Yes.

By Mr. Royall:

Q. Do you have your records to support that? A. I have the records taken out of our purchasing files.

* * * * *

Q. Have you made any specific future plans, immediate future plans, with reference to your private label bleach?

A. Yes, we have.

Q. With whom have you made contracts about it? A. We made contracts with the Blue Magic Company in Wil-

Alvin A. Bissmeyer—Direct

son, North Carolina to supply us with considerable quarts, additional quarts of quart size, and in addition the half-gallon and gallon sizes.

(Tr. p. 4841)

Q. When was that made? A. It was in October.

(Tr. p. 4843)

Q. Mr. Bissmeyer, did you enter also into an agreement with the Texize Company? A. Yes, sir.

Q. When was that? A. Within the last ten days.

(Tr. p. 4844)

Q. What is your reason for making these contracts?

A. Two of our principal competitors, A&P and Winn-Dixie, have private label bleaches that they have been promoting and selling at prices lower than any bleach that we have had in the store, and we want to be competitive.

(Tr. p. 4845)

CROSS EXAMINATION

By Mr. Tincher:

Q. Now, sir, you say you have private label in some stores, is that correct? A. That is correct.

Q. In how many of your stores do you have that? And my questions will all be with reference to this 1956-57-58 period that you gave.

Alvin A. Bissmeyer—Cross

(Tr. p. 4846)

A. In 234 stores, to answer your question.

* * * * *

Q. At the present time then, sir, what determines whether you have private label liquid bleaches in one of your stores or not? A. That is determined by the competitive situation. Our competitors, as I mentioned before, the A&P Tea Company, who have stores in all the areas that we are located in, have a private label bleach. And we need one to compete with the A&P Tea Company. We also need a private label bleach to compete pricewise with other competitors in some areas. For example, with Winn-Dixie stores in the Southeastern

(Tr. p. 4847)

states.

Q. Why do you have to have it to compete? A. Because it gives our competitors an advantage to sell a bottled bleach at a lower price than we can sell a bottle of bleach.

* * * * *

(Tr. p. 4848)

* * * * *

Hearing Examiner Haycraft: Do you know anything about the quality of this private label bleach?

The Witness: All that I know is that it is a 5¼ percent bleach, and I am not a technician nor a chemist. Beyond that, I don't know.

* * * * *

Q. You mentioned that you buy private labels from Blue Magic, Inc.?

(Tr. p. 4849)

A. Yes, sir.

Alvin A. Bissmeyer—Gross

Q. You buy no bleach from them of their own brand, do you? A. Yes, we do.

Q. What is the name of it? A. Blue Magic.

Q. Where do you sell that? A. We sell it in the North Carolina stores, but I couldn't tell you just which stores. Some of them in North Carolina sell it.

* * * * *

Q. On this private label bleach you pay the supplier a lower price than you pay the suppliers of Roman Cleanser and Clorox, do you not? A. That is true.

Q. How much bleaches do you carry in your stores? A. Do you mean brands?

Q. Yes. A. Some stores have three brands, some have sometimes five.

Q. Do you carry Roman Cleanser?

(Tr. p. 4850)

A. In some areas, yes, sir.

Q. And Clo White? A. Yes, sir.

Q. And Clorox? A. Yes, sir.

Q. What other brands, sir? A. Texize and Purex in Indianapolis, and Blue Magic in a few stores in North Carolina. That is about all I can think of.

Q. You commenced selling your private label bleach in June of 1954? A. That is approximately correct. I don't have the figures with me. That is approximately right.

* * * * *

(Tr. p. 4851)

* * * * *

Q. Clorox is carried in all of Colonial stores, is it not? A. Yes, sir.

Alvin A. Bismeyer—Cross

Q. And Roman Cleanser is carried in some of your Colonial stores? A. Yes, sir.

Q. And Clo White is carried in some? A. Yes, sir.

Q. Texize in some? A. That is true.

Q. And all the other brands including private labels in some? A. That is right.

Q. Don't you have any personal knowledge at the present time, sir, about the prices your stores charge the housewife for these bleaches? A. It will vary according to divisions. I can give you the approximate prices, but there will be a variation of a cent or two one way or the other.

Q. All right, sir.

* * * * *

(Tr. p. 4852)

A. On the private label bleach, on the quart size, the price is approximately 14.5 cents, or two for 29.

Another brand that I did not mention that we have is Fleecy White. We have that in quite a few stores. I didn't think of that one before.

On Fleecy White and Roman Cleanser we will sell at about 18 cents for the quart size. Clorox will sell at approximately 19 cents to two for 39 in the quart size.

Hearing Examiner Haycraft: That first one, you meant 15 cents or two for 29? You said 14.5.

The Witness: The reason I say that, some of our stores have half-cent keys on the registers. Two for 29 or 15 cents in most stores, yes.

By Mr. Tinch:

Q. How about Roman Cleanser? You mentioned that.

A. I mentioned that and Fleecy White, which are pretty close in price.

Alvin A. Bissmeyer—Redirect

Q. How about Texize? A. Texize will be priced along with Fleecy White and Roman Cleanser.

Q. And Clo White? A. I am not familiar with the retail price of Clo White.

* * * * *
(Tr. p. 4854)

Q. Since you started having private label in 1954, have you been adding it to your stores as you go along or did you

(Tr. p. 4855)

start out having pretty much the same number of stores you have now selling private labels? A. We sold the quart private label in the stores in the area supplied by the Atlanta and Thomasville warehouses since 1954. We did not start to sell this bleach in the Norfolk, Virginia, area until early June of 1958.

* * * * *
(Tr. p. 4856)

REDIRECT EXAMINATION

* * * * *
(Tr. p. 4857)

Q. Do you consider a private brand sale important in your competition in the bleach industry?

A. Yes.

RECROSS EXAMINATION

By Mr. Tincher:

Q. You just told counsel that you sell your private label

Bernard F. Trimpe—Direct

as first-quality, a quality as good as the rest of them; is that true? A. That is true.

Q. As a matter of fact, you are selling private labels on a price consideration rather than on a quality consideration, are you not? A. Quality at a price.

Q. But it is primarily price that sells private label, isn't it? A. That is true.

Q. There is a class of people who want the lowest price and that is who you are aiming at with private labels?

(Tr. p. 4858)

A. That is right. But if the quality wasn't satisfactory, they wouldn't buy it at any price.

* * * * *
(Tr. p. 4859)

* * * * *
Room 532
Federal Trade Commission
Washington, D. C.

Wednesday, 26 November 1958

Met, pursuant to adjournment, at 9:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *
(Tr. p. 4860)

PROCEEDINGS

* * * * *
Bernard F. Trimpe

resumed the stand as a witness for the Respondent and, having been previously duly sworn, testified further as follows:

DIRECT EXAMINATION (resumed)

By Mr. Royall:

Q. Mr. Trimpe, as a sales manager of the Clorox Chemi-

Bernard F. Trimpe—Direct

cal Company, were there any advertising programs or promotional plans which you thought desirable which you were prevented from engaging in because of lack of financial resources? A. None.

* * * * *

Q. Did you engage in such programs and promotional plans with the Clorox Chemical Company as you thought necessary and desirable?

* * * * *

(Tr. p. 4861)

A. Yes, we had adequate resources to use.

Hearing Examiner Haycraft: You mean they always gave you everything you asked for?

The Witness: No, they didn't give me everything I asked for, your Honor. But we felt that if we made sense in our recommendations that we could go ahead with our advertising promotions the way we wanted to.

* * * * *

By Mr. Royall:

Q. Mr. Trimpe, in your capacity as sales manager, have you personally had an opportunity to observe the methods by which private brands merchandise, particularly with regard to their location in the store and the amount of shelf space devoted to them?

* * * * *

(Tr. p. 4862)

* * * * *

A. Yes, I personally visit, as I have indicated in previous testimony.

By Mr. Royall:

Q. What is the source of your personal knowledge?

Bernard F. Trimpe—Direct

A. My personal visits in the stores and travel with the retail men.

Q. What have you personally observed as to private brands in the matters that I asked you about?

* * * * *

A. Well, in travelling around the country, I personally have observed that the people who have private labels normally give special space, shelf space. They give special preference in the location within the bleach section to their own private label bleach.

(Tr. p. 4863)

By Mr. Royall:

Q. Does that apply to the quantity of shelf space, too?

A. Yes, it does.

* * * * *

(Tr. p. 4881)

* * * * *

By Mr. Royall:

Q. Now, Mr. Trimpe, you testified last week in connection with the Buffalo situation at transcript 4373 and 4374 that it was necessary for you to consider the price of competitive brands in determining your price on some occasions? A. That is true.

Q. You testified about the Buffalo situation. State whether or not you had a similar situation recently in another location? A. Yes, we have had a—

Q. Where was that? A. Philadelphia.

(Tr. p. 4882)

Q. Will you give the facts about that? A. One of the local chains in the Philadelphia market decided that it wanted to raise the price on Clorox in the market and did so, quite a substantial raise at the retail level. And

Bernard F. Trimpe—Direct.

because the market is pretty well dominated by the chains and the market as soon as the first one did the others followed suit, so we had in that market then our prices consistent in all the chain outlets at this new high level.

This caused me some concern and as it continued I worked with our distributor to try to do everything we could to offset this situation. I asked him to try to get features or displays to show or to get the price down consistent to the position throughout the rest of the eastern market and basically throughout the rest of the United States.

We were able to get one feature and one time when we did get a feature the other chains met it and we were able to get some business back. Over the first six months' business we have lost some volume in this market as a result of this pricing situation.

* * * * *

(Tr. p. 4883)

* * * * *

Q. Did the chain which you did not name but which raised the Clorox price, did that chain have its own private brand? A. Yes, as do all the others in the market.

* * * * *

(Tr. p. 4895)

* * * * *

Q. I hand you a copy of Commission's Exhibit 214, and ask you whether or not that is an illustration of what you were referring to about mops and pails (handing documents to the witness). A. Yes, this is a typical brochure which is put out every year, twice, in the spring and in the fall, to be used by our salesmen in calling on the trade, either at the chain or the wholesale or the retail

Bernard F. Trimpe—Direct

level, which summarizes the objectives of the promotion in the sense that we would like to get them to tie Clorox in these displays in with these . . . items in the store.

* * * * *

(Tr. p. 4898)

* * * * *

Q. I ask you at this time, sir, what future promotions are you contemplating now which have not already been mentioned by you?

Mr. Tincher: I object, sir.

Hearing Examiner Haycraft: Sustained.

Mr. Royall: Well, your Honor, I am not—

Hearing Examiner Haycraft: I told you yesterday I am cutting this off up until today, not in the future.

Mr. Royall: All right, sir.

I was asking it solely because we wanted to give you a complete picture, and I won't tender an answer, but I do call attention to your Honor that if any question comes about this promotion we have—

* * * * *

(Tr. p. 4899)

* * * * *

Mr. Royall:

* * * * *

Your Honor, I want to make this proposition to you.

Your Honor ruled out Exhibit 71, which related to this list of reports on competitive activities of other liquid bleach manufacturers.

It seems to me, your Honor, that at this stage there has been sufficient testimony by Mr. Trimpe that this information which he receives in the ordinary course of business plays an important part in his sales policies, and in his promotion policies.

• Bernard F. Trimpe—Direct

He has testified that that was the purpose for which he has collected this information over a course of years. This chart shows nothing more than the compilation of that information obtained from these weekly reports which we have offered for inspection.

It is offered, among other things, for the purpose of demonstrating the many types of promotions, frequency of promotions in the liquid bleach industry, and the highly competitive nature of the industry; and to also show the

(Tr. p. 4900)

background necessary to the frame of mind which the Clorox Company, and Mr. Trimpe, as its sales manager, has in planning its own promotions.

We re-offer it generally and if it is not admitted generally we re-offer it as the frame of mind, state of mind, which your Honor has referred to on occasions, particularly—

Hearing Examiner Haycraft: But that is not in issue, as I understand it.

Mr. Royall: I don't know, sir, whether it is relevant on intent and purpose or whether it is predatory or not, and we think it is, and we re-offer it, your Honor.

Hearing Examiner Haycraft: If this repondent was charged with a violation of the Robinson-Patman Act, or something of that kind, where it was necessary for him to justify what he did by what competitors did, then, of course, we have a different story.

But that isn't involved here and the only possible purpose it could serve is one which it is not competent; that is, it is based on hearsay entirely and hearsay which does not come within the exceptions to the hearsay rule under the Danbury-Hatters decision. So I renew my ruling.

Mr. Royall: All right, sir.

Bernard F. Trimpe—Direct

(Tr. p. 4901)

By Mr. Royall:

Q. Now, Mr. Trimpe, on pages 2819 to 2821 Mr. Buchman, Savol Bleach Company, testified that Clorox used a 10 cent count and recount deal in the spring of 1958 in Hartford, Connecticut, and also a ten cent advertising deal there. Mr. Buchman was asked in the record to let us know if he found out that his testimony was in error and we have not heard from him.

I ask you did the Clorox Company or before it the Clorox Chemical Company, during your experience, use such a promotion as testified by Mr. Buchman? A. Absolutely not.

Q. Don't answer this until his Honor rules on it:

Mr. Buchman also testified at transcript 2820 that Dazzle did not run this type of promotion in Hartford, Connecticut, in the spring of 1958. Based on your reports received in the regular course of business do you know whether or not Dazzle did run this type of promotion in Hartford in the spring of 1958?

Mr. Tinker: We object to that, sir.

Hearing Examiner Haycraft: Do you have any evidence in the way of ads or promotion data to contradict that? I will be glad to have it, but what you are attempting to elicit now wouldn't be competent and would be hearsay.

Mr. Royall: What we have, your Honor, is a report

(Tr. p. 4902)

from the distributor Abbott, Hall & Co.

Hearing Examiner Haycraft: You better call him. Objection sustained.

Mr. Royall: Your Honor, may I tender this answer?

Hearing Examiner Haycraft: Yes.

Bernard F. Trimpe—Cross

Mr. Royall: That Yes, I have this information. My distributor in that area, Abbott, Hall & Co. reported it to me.

* * * * *

(Tr. p. 4903)

* * * * *

CROSS-EXAMINATION

By Mr. Tincher:

* * * * *

(Tr. p. 4910)

* * * * *

Q. All right, sir. When were these Buffalo and Atlanta tests that you spoke of where the price was increased on quarts to \$2.01? A. When were they?

Q. Yes, sir. A. January, I believe. The first part of January of 1958.

Q. And how long did those tests last, sir? A. Roughly about August, I believe in Atlanta we discontinued; and September, I believe in Buffalo.

Q. Now, was this price, \$2.01, a price to the grocer from the distributor or your price to the distributor? A. That was the price from the distributor to the grocer and we, in turn, had charged a ten cent increase in price to the distributor.

Q. Now, you said this experiment was unsuccessful. On what did you base that, sir?

* * * * *

(Tr. p. 4911)

* * * * *

A. We have IBM record sheets for those territories as we do for all the territories and they are broken down by sizes and by buyers and in tracing our shipments to the

Bernard F. Trimpe—Cross

territories, the reaction of our distributors in the territories to the situation, we elected to discontinue it because we did not feel that we could continue to have a higher price on the retail shelves considering all those factors.

Q. Well, did those records show sales decrease? A. Yes. One territory, I will have to pull the record in my mind, but I am sure the Atlanta territory showed one greater than the Buffalo territory, there were variable factors there.

* * * * *

(Tr. p. 4915)

* * * * *

Q. Now, from your testimony are you trying to imply or state that Clorox has lost market share since its acquisition by P&G? A. Am I trying to imply that Clorox has lost market share because I referred to the private label growth?

Q. And all the other expansions, acquisitions, and door to door? A. Well, I am not implying anything, I am just stating the facts that in the areas where we have met new private label competition our sales volume is down considerably. I can make a particular reference to it if you would like.

Hearing Examiner Haycraft: Again you better get your records on that.

The Witness: Yes, sir.

In those areas where we have met new private label competition we are suffering sales losses. And I don't have share figures for individual markets because that is not available to me. It is available to me only from the Nielsen territorial share figures and I can state from the Nielsen share figures that in those areas where private label growth has been extensive, for example, the southeastern territory

Bernard F. Trimpe—Cross

of the United States, measured by Nielsen, that I consider a big factor in our share losses in that

(Tr. p. 4916)

area to be the private label growth.

(Tr. p. 4931)

Q. Well, could you tell me any place where private labels are higher priced than nationally advertised or regionally advertised bleaches? A. In my own City of San Francisco, California, they are not higher priced than Clorox, but they are higher priced than the local bleach.

Q. And what brands are those, sir? A. Saniclor.

Q. You consider that a private label? A. I am sorry. No, what I said was this, that the private label bleach, was Safeway, White Magic is not priced higher than Clorox but it is priced higher than the Saniclor bleach on the shelves right with it, and that situation exists in many parts of the country.

(Tr. p. 4934)

Q. Has Clorox ever made private labels? A. No, we have not.

(Tr. p. 4935)

Q. Now, at record 4395 you stated, Mr. Trimpe, and I am paraphrasing, if a chain brings in private label, Clorox loses shelf space because shelf space is not expanded. Is that correct?

The Witness: Yes, he just read it; I did.

Bernard F. Trimpe—Cross

By Mr. Tincher:

Q. In that process other bleaches in the store would lose shelf space which were theirs prior to the private label?

* * * * *

The Witness: Yes, I think there would be a readjustment of shelf space.

(Tr. p. 4959)

* * * * *

Q. Do you have any memorandum on your pre-merger promotional policy? A. Pre-merger promotional policy?

Hearing Examiner Haycraft: What in the world are

(Tr. p. 4960)

you going to hope to prove by that?

Mr. Tincher: Sir, the witness testified on direct that he had been thinking about all these promotions long before the acquisition.

Hearing Examiner Haycraft: What of it? Suppose you hadn't, suppose you established that he is wrong about that. What has that got to do with the issues in this case?

Mr. Tincher: It shouldn't have come in on direct.

Hearing Examiner Haycraft: That is what I am trying to tell you. There may be a lot of things going in on direct that you don't need to attack: The weight that is given to them.

The Witness: Yes, we have letters from the agency to me and we have some replies in the files, a cents off label that we used, and we have—I have correspondence from people who come to talk to me about premiums—in the general files back in my office, if that is what you are asking me about.

Hearing Examiner Haycraft: Don't you realize that

Bernard F. Trimpe—Cross

when you ask these questions that you only strengthen his testimony along that line?

Mr. Tincher: No, sir, I do not.

Hearing Examiner Haycraft: Sure you do. He has given you volumes of things that he probably might have touched upon on direct examination except the time it

(Tr. p. 4961)

would have taken to bring it out.

* * * * *

(Tr. p. 4965)

* * * * *

Q. When was this Philadelphia situation you mentioned, sir? A. It started right after the first of the year, January. I can get you the exact date.

Q. What grocery store or chain was involved there? A. Well, initially A&P Tea Company, and then all of them, all of the other major chains followed suit.

Q. Now, you said you lost volume. Do you have any documentary proof of that? A. Not with me, I am sorry.

Q. Not with you.

Mr. Royall: What is that about?

(Tr. p. 4966)

Mr. Larsen: Loss of sales in Philadelphia.

Mr. Tincher: Once again, sir, we would like to request that.

Mr. Royall: Write it down.

Mr. Tincher: Is my request granted or denied, sir?

Hearing Examiner Haycraft: I thought he was going to give it to you.

Mr. Royall: Your Honor, I don't think we are required to do it, but we want to help any way we can within

Bernard F. Trimpe—Cross

reason and I think unless there is some reason not now apparent to me I think we will produce it.

Hearing Examiner Haycraft: As I recall was that something you testified to on direct?

The Witness: Yes.

Hearing Examiner Haycraft: Then you should furnish it.

Mr. Royall: We will bring it in.

* * * * *

(Tr. p. 4967)

* * * * *

Q. Now, with reference to your testimony this morning about Hartford, Connecticut, you testified, I believe there was no count and recount or no ten cent advertising deal?

A. That is right.

Q. Now, is that as far as the Clorox Company is concerned? A. We have not had a count and recount.

Q. Your broker or distributor might have had? A. No, sir, he could not have had.

Q. And why couldn't he, sir? A. Well, because if we found out he did something that would be outside of our policy and our policy is to suggest to them the resale prices, we would discuss it with him quite seriously immediately.

* * * * *

(Tr. p. 4984)

* * * * *

Q. Let me ask you, sir, if your survey of these manufacturers did not indicate in Chicago that the manufacturers selling door to door only hit a few small stores and only in the extremely low income neighborhoods? A. Is that what it says in that letter?

(Document is handed to the witness.)

Bernard F. Trimpe—Cross

A. Yes, and I think there is another letter—I guess not. All this indicates to me is they went all out to get this information together and it is true that is what it says.

* Mr. Royall: Let me see it a minute, Mr. Tincher.

By Mr. Tincher:

Q. And doesn't that information from your survey reveal that the small stores, where this is being sold, are ones where the distributor's salesmen do not ordinarily call?

A. Yes, that indicates that.

Q. All right, sir. A. These small ones—as the Examiner has referred to them, the "Momma-Poppa stores"—we get into three or four times a year, according to the size of the territory.

* * * * *

(Tr. p. 4986)

* * * * *

Q. Now, in the fall of this year—the fall of 1958—the Clorox Company distributed coupons worth eight cents on the purchase of the next half gallon of Clorox bleach if the person would buy a bottle of Clorox bleach, did they not?

A. In a restricted territory, and the coupon was on the label.

(Tr. p. 4987)

Q. Yes. And those were to be redeemed by Procter and Gamble in Cincinnati, Ohio? A. That is the facilitating agency for it, yes.

Q. What area were those distributed in, sir? A. In Seattle, Portland—I am going to name the distributors and it covers Seattle, Portland, Atkinson-Lungren in Boise, Idaho, Spokane, and Salt Lake City, I believe, five distributors in the Northwestern part of the United States.

Q. Where else in the United States have you distributed these coupons, sir? A. You mean on the label?

Bernard F. Trimpe—Cross

Q. Yes. A. Where have we run that? Somebody will have to refresh my memory. We did run another one.

Q. Wichita, would that refresh your memory? A. No, not Wichita, I don't believe. I may stand corrected on it, but I don't think so. No, not Wichita.

Q. Now, have there been any coupons or price-off labels in Nashville or Chattanooga, Tennessee? A. Yes, in Chattanooga and Nashville.

Q. Were those coupons or price-off? A. They were price-off.

Q. Was there in San Francisco a price-off label? A. Yes, there was.

Q. Was there a coupon?

(Tr. p. 4988)

A. No coupon.

Q. May I suggest Kansas City to you, sir, as a cent-off coupon for Clorox? A. Newspaper, but not on the label.

Q. A coupon printed in the newspaper? A. Yes.

Q. And the housewife was to take that coupon to a grocery store? A. If she so elected.

(Tr. p. 5006)

Room 332
Federal Trade Commission
Washington, D. C.

Monday, 5 January 1959

Met, pursuant to adjournment, at 9:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

Eric Bellingall—Direct

(Tr. p. 5007)

PROCEEDINGS

* * * * *

(Tr. p. 5010)

* * * * *

Eric Bellingall

was called as a witness on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Hearing Examiner Haycraft: Will you state your full name and address?

The Witness: Eric Bellingall.

* * * * *

By Mr. Royall:

Q. Mr. Bellingall, you have given your name. What is your present occupation? A. I am a Vice President and Member of the Board of Directors of Honig, Cooper and Harrington and Miner, which is the advertising agency for the Clorox Company. Our headquarters are in San Francisco.

Q. How long have you been with that Company? A. Since 1947.

Q. Does the Honig, Cooper Company handle the Clorox account? A. Yes, it does.

Q. How long has it had this account?

(Tr. p. 5011)

A. Since 1928.

Q. Does the Honig, Cooper agency handle other accounts, whose products are distributed through grocery stores?

A. Oh, yes. We have probably more than 50 accounts alto-

Eric Bellingall—Direct

gether, and about 80 percent of our total billings are on products distributed through grocery stores.

Q. During your association with Honig Cooper Company, have you worked personally on the Clorox account?

A. Yes, I have.

Q. Have you worked primarily on it? A. I have worked almost entirely on the Clorox account, beginning in 1947, in a creative and contact capacity, and since 1956 as the account supervisor.

Q. Have you been in charge and responsible for that account? A. Since 1956, yes.

Q. And before that time, state whether or not you were thoroughly familiar with it? A. Yes, I was.

Q. Now, what function does the Honig, Cooper Company perform in connection with the advertising and promoting of Clorox? A. Well, they function—the function that the agency has always performed for the Clorox account.

Q. Will you describe that?

(Tr. p. 5012)

A. It is our prime responsibility to recommend to the client the advertising and promotional programs which he should undertake and the expenditures which he should place against each one. We present these to the people in the advertising departments of the clients and then activate the programs in the field.

Hearing Examiner Haycraft: By "activate," you mean you secure the space, advertising space?

The Witness: Yes, sir; the agency has total responsibility for placing all the space orders and print orders, and things of that nature, engravings, plates, art work, all the things that go to make an advertisement and all the things that go to placing an advertisement are all done by the agency.

Eric Bellingall—Direct

Hearing Examiner Haycraft: That includes both newspapers and magazines on one hand and television and radio as well?

The Witness: All media, sir; yes.

Hearing Examiner Haycraft: Go ahead.

By Mr. Royall:

Q. Now, Mr. Bellingall, in planning and recommending and effecting these programs, what information do you have available? A. Well, in addition to the normal information that any advertising agency would have, that is, media and marketing data and research information and so forth, because of the

(Tr. p. 5013)

strong package goods orientation of our particular shop, we have a field merchandising section, and this consists of a group of men who spend about one-third of their time in grocery stores. Their purpose is to check up on the in-store promotions that we are putting on for our clients, Clorox, and the other clients as well, to keep tabs on competitive merchandising activity at the store level and to observe generally what types of promotions are going on in the grocery field.

This group of men report back to the account supervisors, as a regular part of their duty, to keep them advised as to promotional activity in the field.

Q. Does this include also information about the competitive activities in the bleach industry? A. Oh, yes. In addition to the field checks that our own men make, Mr. Trimpe has broader reports coming in, that is, reports coming from more wide-spread areas, as to competitive bleach activity at the store level, and he in turn makes that available to us for our information.

Eric Bellingall—Direct

We, ourselves, for years have maintained a clipping service, which has the function of clipping competitive bleach advertisements from print media and forwarding them to us on a regular basis.

Q. Do you have assistance—what assistance do you have from others members of the agency staff, in general?

(Tr. p. 5014)

A. Well, we have specialists in all departments and, in addition to TV, and copy, and the art, and radio and so forth, we have marketing people, who are specialists on the promotional aspects of marketing products through grocery outlets.

Our particular marketing director was formerly a sales manager of a large West Coast food company, for instance.

Q. Now, do these activities which you have described in general apply both to the services rendered to the Clorox Chemical Company and also to the present Clorox Company? A. Yes, there has been no change in that.

Q. Now, in your capacity with Honig, Cooper agency, state whether or not you have familiarized yourself with the history and development of Clorox advertising and promotional policies and practices, even prior to the time you worked on the account? A. Yes, I have.

Q. Why did you do that? A. I think it is probably standard procedure for any man coming in to work on an account, to familiarize himself with the history of that account, the type of advertising that it has used in the past, which forms of advertising and promotion have worked for them and use that as a taking-off place for further activity.

Q. Did you consider that necessary in order to properly

Eric Bellingall—Direct.

(Tr. p. 5015)

perform your functions? A. Yes, you would have been blind as to what had happened without it.

Q. Can you tell us briefly what, in general, Clorox' practices and policies are, from the time that Clorox was first marketed?

* * * * *

(Tr. p. 5023)

By Mr. Royall:

Q. First describe what the circumstances were when you came? A. The situation when I came with Honig, Cooper in 1947 was that the account was using a combination of consumer advertising and sales promotion allowances. The recommendation that I made and that the agency effectuated shortly after I came there was that a change be made in the nature of the advertising, which heretofore had been largely educational in character, and it was our conviction that the bleach industry had matured at that time to the point where there was aggressive competition in most of the areas where we did business and our recommendation was to the effect that the advertising be changed from essential educational copy to more competitive copy, to make the brand less susceptible to the inroads of lower price competition.

* * * * *

(Tr. p. 5024)

* * * * *

Q. Were your recommendations followed? A. Yes, they were.

Q. How did they work out? A. Well, they worked out fairly well. In fact to the satisfaction of the client to the extent it was decided to take some of the funds that formerly had been going into promotional allowances, and

Eric Bellingall—Direct

divert them to the new type of consumer advertising. This was done gradually at first and then with increasing weight, until it was completed in 1953, and at that time the promotional allowances were temporarily dropped in favor of a total expenditure in consumer advertising in support of the brand business.

* * * * *

(Tr. p. 5025)

* * * * *

Q.

* * * * *

(Tr. p. 5026)

In 1955, did you make any recommendation for a change as between advertising and promotions? A. Yes.

Q. What was that change that you recommended? A. The change that we recommended was the introduction of national promotions for Clorox. May I go beyond that?

Q. That is enough for that question. Now, why did you recommend that?

* * * * *

The Witness: We had in past years, sir, but not since 1953, when all of our expenditures had been devoted to consumer advertising, as against promotion. But in 1955 we discussed and recommended the return to promotion at a national level. By that I mean across the country.

Hearing Examiner Haycraft: All over the United States?

The Witness: Yes, sir.

Hearing Examiner Haycraft: National advertising campaign?

The Witness: Not only national advertising, but a national promotion and I am speaking now of merchandising activity in the stores, retail stores.

Eric Bellingall—Direct

Hearing Examiner Haycraft: I see, that is by free

(Tr. p. 5027)

goods and things like that.

The Witness: It was not specifically of that character, but an in-store promotion.

Hearing Examiner Haycraft: All right. Now you may go ahead.

By Mr. Royall:

Q. Why did you recommend that change? A. Because after Mr. Trimpe—

Q. Leave out Mr. Trimpe. Why did you recommend that change? Did it have any relation to competitive activity?

* * * * *

A. We did so on the basis of the increasing awareness on the part of the agency and the client of intensified competitive activity.

* * * * *

(Tr. p. 5029)

* * * * *

Q. Yes, it was my fault, for asking about the reasons before I asked you what you did. Now, I ask you, what were your reasons for making this change in which you put in these other promotions? A. Recommended and went ahead with the national promotions?

Q. Yes. A. Our reasons were to sustain the brand's position against what we considered to be intensified competitive activity and to give us, in particular, activity at the retail level, where we felt we were at some disadvantage with private labels, and lower-priced bleaches in particular.

* * * * *

(Tr. p. 5030)

* * * * *

Eric Bellingall—Direct

Q. Now, in 1955, the period you were speaking of, did
(Tr. p. 5031)

Mr. Trimpe come to the company? A. Yes.

Q. Did you and Mr. Trimpe consider these matters and discuss them together? A. Yes, we did.

Q. What was the nature of the changes which you discussed and recommended? A. Well, Mr. Trimpe came in 1955—it was, I think, June. As soon as he had become acquainted with his sales force and the problems confronting them in various parts of the country, he entered into a series of discussions with the agency as to the nature of promotions that might best be utilized to combat competitive activity.

We discussed promotions with two major objectives in view, two different categories of promotions, actually—one, the national promotion I referred to previously, whose objectives were to provide a unified sales program for the selling force so they would have them all doing the same thing at the same time and give them something to rally around. We also hoped, by means of the nature of the national promotion that we did devise, to be able to lengthen the peak selling season, which traditionally in the liquid bleach industry peaks in late summer, and thus gain some volume increase.

We had another objective in view, which was the

(Tr. p. 5032)

development of promotions of a nature that would increase bleach usage by expanding the application of the product to, primarily, the non-laundering field such as housecleaning usage and so forth. That was the first category of promotion we discussed.

The second that I had referred to was Trimpe was par-

Eric Bellingall—Direct

ticularly interested in having us develop some promotions that would be useful to him, to run on a small-scale basis, essentially, as counters to localized competitive activity, where we had a problem that was confined to a particular area, and where the nature of the promotion would be such it would be inappropriate for national use.

Q. This was in 1955, you say? A. That is correct.

Q. Let's first talk about these promotion plans on a national scale. Were any plans put into effect in that connection, and if so, when? A. Yes. The first one that went into effect, after Mr. Trimpe's arrival, was in the spring of 1956. Now, this particular promotion was what we termed a "nylon-rayon" promotion. It was based on research that had been conducted by the Clorox Chemical Company, which indicated that the product could be used beneficially on the new synthetics, which were becoming extremely popular then—nylon, rayon, dynel, acrilon, and so forth.

(Tr. p. 5033)

The purpose of the promotion was to get this idea across to housewives at the store level, the place where they normally went to buy their bleach, to advise them by all means possible that this product could be used on these new fabrics that they were buying in such quantities.

Q. Were any specific things done in the way of implementing this nylon-rayon promotion? A. Yes. We ran advertisements, advising the consumer of this new development, in our magazines and newspapers, and we promoted it extensively at the store level on a nation-wide basis. We had shelf talkers and reproductions of the advertisements and displays in the stores, and little recipes that the salesmen would get up on the shelf, so the woman could take one and it would advise her how to get stains out of nylon blouses and so forth, that type of material.

Eric Bellingall—Direct

* * * * *

Q. I mean any material for use by the housewives, any rayon or any nylon material. A. Yes, I am referring specifically not only to the display material in the store, but the provision of these recipe slips—Clorox had a patented process for removing the yellowish cast that develops in all nylon after a

(Tr. p. 5034)

period of exposure to air, and the product is used with vinegar to remove this. Our research indicated it was quite a problem with housewives and we thought we had an advantage in being able to advise them how to get it out through the use of this product with ordinary household vinegar.

Q. You say this was effective in the spring of 1956. You planned it prior to that time, did you? A. Well, the research upon which this had been based was conducted in 1955.

Q. Did you work out, about that time, any additional promotions on a national scale? A. Yes, we did. The so-called nylon-rayon promotion was essentially a one-time affair, but Trimpe was particularly interested in having us develop a promotion on a national scale that could be repeated, so that it would be an annual or semi-annual activity, that he could direct all his salesmen's energies to, and our solution to that was the development of the fall and spring housecleaning promotions. The first of those we put into effect in the fall of 1956.

Q. The fall of 1956? A. Yes, sir.

Q. What was the purpose, what was your reason for this fall and spring housecleaning promotion? A. I may have to repeat some of the things I have said.

Eric Bellingall—Direct

(Tr. p. 5035)

* * * * *

Q. The reasons you gave, generally, for these promotions, nation-wide, are they applicable to this fall housecleaning thing? A. Yes. In fact, by lengthening the peak, I mean by having a spring and fall promotion, to start the ball rolling a little sooner and keep it rolling a little later, if possible, in the peak volume selling season. That was the selling strategy behind the thing.

Q. Was there any other general objective in these national-scale promotions? A. I may have touched on this. The nature of the promotion was such as to encourage a more diversified use of bleach, or to encourage the use of bleach for a multiplicity of purposes throughout the housecleaning range, in addition to the traditional laundering applications.

Hearing Examiner Haycraft: That was more educational?

The Witness: In that respect, yes. And we would support this in our consumer advertising, also, to that end.

By Mr. Royall:

Q. And that would apply to bleach generally? A. Oh, yes. Any time a major advertiser in the field

(Tr. p. 5036)

undertakes any educational work as to introducing new uses or encouraging additional uses of the product, all bleaches benefit thereby, because the housewives can buy at a lower price—

* * * * *

(Tr. p. 5037)

* * * * *

Q. Now I believe you said the first-housecleaning cam-

Eric Bellingall—Direct

paign was in the fall of 1956. When was that first planned and arranged? A. That would have been—we would have to work in the first quarter of 1956 in order to have a promotion in the market by the fall of 1956.

Q. Was that one in the fall of 1956 followed by a spring housecleaning promotion the next year? A. Yes, it is a concomitant part, to lengthen the selling season that occurred in the spring of 1957.

Q. When was the one in 1957 planned? A. For that we would have to start working in the latter part of 1956 in order to get the materials prepared and into the field in time.

* * * * *

(Tr. p. 5039)

* * * * *

Q. Are these fall and spring housecleaning programs continued to this time? A. Yes, since the first one in the fall of 1956, we have had a spring and fall one each year.

Q. And that was carried over into the Clorox Company, after the merger, is that correct? A. That is correct.

Q. Have there or have there not been some changes and refreshing of them? A. Yes. You have to keep doing something different to liven

(Tr. p. 5040)

up a promotion that is essentially of the same character, the theme and motif is changed for each promotion, and we have introduced a gimmick of the self-liquidating premium to give it another little consumer build-up. But the basic structure and concept of the promotion is as it was originally devised.

* * * * *

Q. Now, has there been any national recognition of this spring housecleaning promotion? A. Yes, there has.

Eric Bellingall—Direct

Mr. Royall: Your Honor, we are going to offer here a plaque and we were going to ask permission, after we offer

(Tr. p. 5041)

it, to substitute for it a photostat of it, and we have the photostat here, or a brochure containing a photostat.

Hearing Examiner Haycraft: We will mark that Respondent's exhibit 108 for identification.

(The document referred to was marked Respondent's exhibit 108 for identification.)

* * * * *

Q: Now I hand you what purports to be a plaque, a copy of which has been stipulated to be correctly copied in the brochure which I will later hand to you; and I ask you: Was that awarded to the Clorox Chemical Company? A. Yes, it was, as a consequence of its promotion in the spring of 1957.

Q: Did you receive, or the Clorox Chemical Company receive, a plaque for the promotions during their tenure, that is, the housecleaning promotions? A. They received an award given to them by Food Field

(Tr. p. 5042)

Reporter, which is one of the leading trade publications in the grocery field; which had conducted a survey among grocers across the United States.

Hearing Examiner Haycraft: What period of time?

The Witness: It was for one of the top promotions of 1956-57.

By Mr. Royall:

Q. Did that cover the promotions prior to the acquisition? A. This covered specifically the spring housecleaning promotion of 1957.

Eric Bellingall—Direct

Q. And is this, the paper I hand you, exhibit 108, a brochure dealing with that plaque? A. It is.

Hearing Examiner Haycraft: It is a photostatic copy of the plaque.

* * * * *

(Tr. p. 5043)

VOIR DIRE EXAMINATION

By Mr. Tincher:

* * * * *

Q. Was this the first such award that Clorox Chemical had ever won?

(Tr. p. 5044)

A. No, sir, it was not. We had previously won a similar award, but in a different category. This was for the best local, one of the best local advertising campaigns conducted.

Q. What year was that, sir, approximately? A. I would say about 1953, in that range. I could check and confirm the date for you.

* * * * *

Hearing Examiner Haycraft: It will be received in evidence as Respondent's exhibit 108.

(The document referred to, heretofore marked Respondent's exhibit 108 for identification, was received in evidence.)

* * * * *

(Tr. p. 5045)

* * * * *

Go ahead, Mr. Royall.

DIRECT EXAMINATION (resumed)

Mr. Royall: Yes, sir.

By Mr. Royall:

Eric Bellingall—Direct

Q. Mr. Bellingall, have I asked you before the recess when the Fall '57 house cleaning promotion was planned?

A. I believe you did, but in any event it would have to be planned and created in the first quarter of the year because of the lead time involved in preparing mechanically reproducing the materials involved.

Q. And did the Clorox Company for the year 1957-58 receive a similar award for this campaign? A. An award similar to the one which we discussed prior to the recess.

Hearing Examiner Haycraft: Is that for the spring of '58?

* * * * *

The Witness: The first was for the Spring of 1957, your Honor; that is correct. This (indicating) is for the Spring of '58.

* * * * *

(Tr. p. 5055)

* * * * *

Q. Prior to the acquisition, how many promotional devices discussed by you and Mr. Trimpe in 1955 were put into effect? You said four? A. At the national level, four.

Q. Which were they? A. The nylon-rayon promotion in the spring of '56.

Q. And the three other spring cleaning ones? A. No, the fall house cleaning promotion in the fall of 1956; the spring house cleaning promotion, spring 1957; and the fall house cleaning promotion of 1957 which had been completed prior to the acquisition and the materials prepared.

Q. There were four promotions but two general types? A. Yes, sir.

* * * * *

Eric Bellingall—Direct

(Tr. p. 5059)

* * * * *

Q. Now, Mr. Bellingall, as to promotions that have been used by the Clorox Chemical Company and the Clorox Company since 1955, that is, both before and after the merger, did they involve any overall increase in spending by Clorox?

* * * * *

The Witness: They represented a diversion of

(Tr. p. 5060)

monies from advertising to promotional purposes but didn't represent any additional rate per case increase in spending. That has been very stable for I believe—you mentioned '55, back beyond that period.

Q. How far back has it been substantially stable? A. Until well at least 1953, I believe.

Q. And what you say in the last couple of answers applies both to Clorox Chemical and Clorox Company, is that right, sir? A. Yes, sir.

Q. Now, prior to the acquisition, were your advertising expenditures spread evenly throughout the country?

A. Well, as a general rule, but there were numerous exceptions to it. There would be areas where we would be confronted with a sales problem or a diminishing market share where more money would be expended on advertising than in other territories.

Q. During what period did those occasions particularly happen? A. Well, that would have been over an extended period of years.

Q. As far back as 1955? A. Yes, sir. Beyond that, as a matter of fact, and probably more so since then, after Mr. Trimpe came with the company.

Eric Bellingall—Direct

(Tr. p. 5061)

Q. Could you give an illustration of additional sums being spent in areas prior to the acquisition? A. Yes, sir. In the southeast territory—I am referring now to the southeast Nielsen territory—a group of six or seven states in the southeastern part of the United States—we had been confronted with a declining market share and as a consequence introduced radio in that area as a means of attempting to correct that problem.

* * * * *

(Tr. p. 5062)

* * * * *

Q. Did this likewise happen in preacquisition of promotional allowances? A. Yes, sir, from time to time, the promotional allowances were varied as to amount and the regions where they would be applied.

* * * * *

(Tr. p. 5064)

* * * * *

Q. Now has your policy with respect to advertising and promotion changed since August 1, 1957?

* * * * *

(Tr. p. 5065)

A. No.

Hearing Examiner Haycraft: You may answer.

The Witness: I did, sir, no.

Hearing Examiner Haycraft: The policy hasn't changed, the implementation has changed, is that it?

The Witness: In some instances.

By Mr. Royall:

Q. Have you, Mr. Bellingall, since August 1, 1957,

Eric Bellingall—Direct

recommended an increase in overall rate of spending per case for advertising and promotion? A. No.

* * * * *

Q. Why have you not done so? A. Because we felt that the rate per case that we had been using previously was one that was serving the brand well. It had been developed through a number of years and had proved itself on this particular brand in its own industry to be adequate to get the volume increase that was required in an expanding market and to turn a profit. It is about the economic equilibrium we would seek on any account.

Hearing Examiner Haycraft: In other words, what you are saying is that it would represent a satisfactory

(Tr. p. 5066)

balance between the volume of sale and your advertising expenditures?

The Witness: Yes, sir, sir. It is an expenditure that our experience on the brand had indicated was adequate for the tasks confronting this brand in its own industry at this time.

* * * * *

By Mr. Royall:

Q. State whether or not for Clorox the increased expenditure per case for advertising and promotion would have been or would be economically sound?

* * * * *

(Tr. p. 5067)

* * * * *

Hearing Examiner Haycraft: It goes to the weight, Mr. Tincher, rather than the admissibility. You see we do have a man here who, I think, you will concede, is an advertising expert.

Eric Bellingall—Direct

Mr. Tincher: Yes, sir, sir.

Hearing Examiner Haycraft: He has been for years, determining this very question, how much money he can get out of an industry or out of a client to carry on, how much is necessary to promote and bring about a desired result of increased sales.

I think it is a proper question to ask him, whether or not an increase volume of increased money from this client would bring about better results. I think that is one thing I have to take into consideration in view of the allegations in the complaint. You may have somebody that says that it will and this man says that it won't. All right, you may answer.

* * * * *

(Tr. p. 5068)

* * * * *

The Witness: Well, we didn't think so, Your Honor, no.
By Mr. Royall:

Q. Do you think so now? A. No.

* * * * *

The Witness: I am talking about—let me make this clear. We develop an increased expenditure, sir, as the brand moves ahead with volume increases. We have not recommended an increased rate of expenditure per case.

Hearing Examiner Haycraft: I don't think I understand your answer. You are saying in one breath that you have recommended increase, and then you say you haven't.

The Witness: No, sir, we have recommended no increase, nor did we think one was desirable nor do we think one is desirable now on the rate of spending per case.

* * * * *

Eric Bellingall—Direct

(Tr. p. 5069)

* * * * *

By Mr. Royall:

Q. Now, Mr. Bellingall, will the amount of advertising and

(Tr. p. 5070)

promotion expenditures suitable for Clorox be the same as that suitable for other grocery products?

* * * * *

The Witness: I don't think so at all. I don't see how the amount that we spend on Clorox, which is a rate of spending that we have come to through some years of development on the account, could be transferred categorically to any other product even in its own industry, let alone in another. Did you say, "Grocery products?"

Mr. Royall: Grocery.

The Witness: I think from my experience in our own agency, each brand in its own industry meets its own competition, has its own rate of turnover, and the rate of spending that can economically be attributed to that brand is unique to the brand in its time and place and marketing circumstances and would not necessarily be applicable to any other brand in another industry.

(Tr. p. 5071)

Hearing Examiner Haycraft: Is it your opinion that competitive resistance determines to any great extent the amount that you spend per case or per unit in any given situation?

The Witness: Well, competitive resistance, sir, could have, obviously, a bearing on your position in a given industry, that is, what your total case average would be and what your total expenditure could economically be based on your case sales.

Eric Bellingall—Direct

Hearing Examiner Haycraft: That wouldn't have to do with the rate per case?

The Witness: Well, the rate per case is really more a function of manufacturing costs and the profit that can be extracted and the amount available for advertising purposes.

* * * * *

(Tr. p. 5072)

* * * * *

By Mr. Royall:

Q. But based on your experience with the Clorox Chemical Company and the Clorox Company, do you know of any reason why this per-case expenditure, which you say is uniform over several years, why it should be changed?

* * * * *

The Witness: No, I do not.

* * * * *

(Tr. p. 5073)

* * * * *

Q. Now, were your recommendations for expenditures, which were made to the Clorox Chemical Company, influenced in any way by any restriction based on lack of funds of the Clorox Chemical Company? A. No. We knew that the Company had adequate financial reserves. We were never pinched in that direction. I have tried to make clear that the rate per case that we have used on this brand is one that has developed over a period of years from experience in this industry with this product. And it has proved satisfactory, and as long as it continues to prove satisfactory, there is more reason for staying with it than there is for going away from it.

Q. Have your recommendations as to the types of promo-

Eric Bellingall—Direct

tions to be utilized by the Clorox Company been affected in any way by the acquisition? A. No, the types of promotions that we have employed since the acquisition were thoroughly known to us.

* * * * *

Q. Were there any new competitive conditions which occurred after the merger which made it desirable from your standpoint

(Tr. p. 5074)

as the advertising executive for Clorox to use some of the promotions, which you mentioned in your last answer?

* * * * *

Q. What were some of these competitive conditions?

Hearing Examiner Haycraft: He didn't answer.

Mr. Royall: Yes, he did.

The Witness: Did you hear me?

The reporter will know.

I said "yes."

The primary change in our competitive situation and the period immediately following the merger was the introduction of a new line of packages by our major competitor.

Another factor would have been the growth of private labeled brands throughout the country.

By Mr. Royall:

Q. Now, has Clorox been sampled? A. No.

Q. Have you recommended any sampling? A. No. Clorox isn't the kind of product that lends itself to sampling.

Q. Why? A. Well, it is bulky, it is heavy, there is a breakage factor,

Eric Bellingall—Direct

(Tr. p. 5075)

it is awkward for people to deliver. You can't handle the product on a ring-and-leave basis. I am sorry—this is, ring the doorbell, drop the sample and go.

The Witness: What I mean, your Honor, is that due to the chemical nature of the product, it could not be left untended at a doorstep where a child could get at it, or the old man could trip over it, or something.

It is something that is unmailable, and it is in a field where there is no advantage to a one-shot sample. I would think it would be about as less desirable a product for sampling as you could imagine.

By Mr. Royall:

Q. Now, Mr. Bellingall, did you recommend the use of television and radio spots for the Clorox Chemical Company? A. Yes, both.

Q. And were both adopted? A. Yes.

Q. Why did you recommend radio? A. I may have—

Q. And under what circumstances? A. I may have touched upon this previously.

Q. Yes, sir. A. Radio was recommended as a consequence of the problem brought to our attention by Mr. Trimpe of declining market share in the Southeast, based on the Nielsen reports.

(Tr. p. 5076)

Q. Did you stop it? A. Yes, we did. We ran it, I think, for, I think at least a year, and then cancelled the radio program.

Q. And why? A. We could adduce no evidence that it was doing any good.

* * * * *

Eric Bellingall—Direct

The Witness: When I said "program," I meant our program of radio spots. This was not a sponsored show.

Hearing Examiner Haycraft: Not sponsored?

The Witness: No, sir.

Hearing Examiner Haycraft: Was it your opinion, then, that radio spot has no effective advertising value?

The Witness: No, sir; I would not generalize like that from a specific instance. Our analysis of the situation was that possibly our normal media program in the Southeast had neglected a sufficient penetration of the Negro market, that perhaps they weren't being adequately reached and the magazines and newspapers and television that we were employing.

There is a fairly low incidence of TV ownership, for instance, among certain groups, and we felt that radio would be a proper means to reach this market, and initially started out employing disc jockies with spot announcements, so that

(Tr. p. 5077)

they could interpolate their own personality into the selling message.

We stopped that after a while, and moved it over to general radio, rather than the group-type of radio approach, and our conclusion was that neither was effective, or not as effective as we wanted it to be and we cancelled out the regional radio programming that we had used.

By Mr. Royall:

Q. Mr. Bellingall, as to TV spots, do you know whether or not local manufacturers can obtain TV spots at a rate lower than a national manufacturer must pay? A. In numerous instances, they can, yes.

Q. Even in Cincinnati? A. WLW-TV happens to be

Eric Bellingall—Direct

one of the stations that does have a local rate card that is lower than its rate card for national advertising.

Q. And you have other illustrations of that, do you?

A. Yes, there are plenty of them.

* * * * *

Q. Now, have the costs of the type of advertising you do for Clorox increased in 1958 over what they were in 1957?

* * * * *

(Tr. p. 5078)

* * * * *

The Witness: They have increased.

By Mr. Royall:

Q. And about how much? A. Well, our media department figures on the basis of rate increases that flow in to them all the time in their normal course of business—

Q. What would it be, approximately? A. Six or seven percent. That is '58 over '57.

Q. That is right.

Now, there has been some testimony in this case that CBS stations were dropped by Clorox in favor of NBC stations.

Is that correct? A. Yes.

Q. Why was it done? A. The day-time audience on the basis of rating services had switched over to NBC, so we put our spots where the people were.

Mr. Tinker: Radio or TV?

The Witness: This is television I am referring to.

(Tr. p. 5079)

Mr. Royall: Television spots you are talking about?

The Witness: That is correct; not radio.

* * * * *

Eric Bellingall—Direct

(Tr. p. 5081)

* * * * *

Q. Now, Mr. Bellingall, except for the spring and fall housecleaning promotions, have you recommended any tie-in between Clorox and other nationally-advertised products? A. Not between Clorox and any other nationally-advertised products; no.

(Tr. p. 5082)

Q. Do you so recommend now?

* * * * *

A. No, we don't.

* * * * *

Q. Why not?

* * * * *

A. We have been offered such tie-ins in the past by other companies coming to us wondering if we would like to tie in in an advertising and promotional sense with their product. Our attitude then, and it is the same now, has been that Clorox is in a position of being a prestige bleach in its own field, that it has very little to gain and might have something to lose in splitting the advertising impact and impression with another product. We have preferred to maintain the identity of the brand by itself, and the promotional moneys and advertising moneys that we have available go in to that brand rather than diffusing the image between two brands.

There are other aspects to it, one of them being flexibility. When you tie yourself in with another brand like that, this is generally a long-range thing that you have to commit yourself for, and then if something goes sour in between times, you are still on the hook with

Eric Bellingall—Direct

(Tr. p. 5083)

something that might no longer be applicable to your current marketing condition.

* * * * *

Q. In spring and fall housecleaning, I believe you do have tie-ins with products, do you not? A. That is correct.

Q. And what type of products have you recommended to tie in with?

* * * * *

A. The merchandising basis of our fall and spring house-

(Tr. p. 5084)

cleaning promotions, your Honor, has always been that the way we can get the best grocery cooperation for our product—and a specific instance of that would be a mass display of it in a store—would be to sell the grocer on the idea that Clorox is a high velocity, quick turn-over item, a traffic builder, the housewife is back there every week or ten days to pick this thing up, to use this as a traffic builder to other items that she would visit normally only rarely, brooms, mops, pails, waxes, the other items in his household supplies cleaning section. That is the marketing basis of the spring and fall housecleaning promotion.

We are not concerned here with brand image diffusion because our recommendation is that it not be done with a nationally-advertised product. We prefer the unbranded or locally-known merchandise for this purpose.

* * * * *

(Tr. p. 5086)

* * * * *

Q. Now, Mr. Bellingall, getting back to your own spring and fall housecleaning itself, I hand you Complainant's

Eric Bellingall—Direct

Exhibit 214 and ask you whether or not it correctly portrays the tie-ins that are utilized in those housecleaning campaigns?

* * * * *

(Tr. p. 5088)

The Witness: Yes, sir, it does, this represents the type of tie-ins I have described and it has been a basic part of this spring and fall housecleaning promotions.

By Mr. Royall:

Q. Now, Mr. Bellingall, would the identification of Clorox with the name "Procter and Gamble" be of any benefit to Clorox from an advertising and promotional standpoint?

* * * * *

The Witness: I don't think there would be any sales rub-off on Clorox due to its association with Procter and Gamble.

Hearing Examiner Haycraft: You don't think Procter

(Tr. p. 5089)

& Gamble is a bigger drawing card to the housewife than Clorox?

The Witness: In the bleach field, certainly not, but more important than that—

Hearing Examiner Haycraft: Do you think that a housewife makes up categories herein, and puts bleach in one partition, and flour in another, and soap in another, and says, I have listened to this one division, and in another division, and so on?

The Witness: No, sir, but I think she has brands in each of those divisions and is not swayed in her purchases by the fact that a company runs those divisions. A housewife buys a brand not a company. I seriously question that if you got 100 women in this room and asked them who

Eric Bellingall—Direct

made Dash and Cascade and Fab and Cheer, that you would have any reasonable response of accuracy. She buys the product that serves her purposes and she is buying a brand on a package without respect to who makes the things.

Hearing Examiner Haycraft: How about the reputation Procter and Gamble has in the years of making products to use in the kitchen, to use so and so, does it have any value at all in another field?

The Witness: No, sir. No. I think the prestige of clorox in the liquid bleach field is far greater than Procter & Gamble's name in that field.

(Tr. p. 5090)

I believe that is true.

Hearing Examiner Haycraft: Of course, Procter and Gamble has not been in that field. I agree to that, but do you mean by that that the housewife does not sufficiently associate Procter & Gamble with cleaning?

The Witness: I don't think the housewife sufficiently associates—I should not say sufficiently—I don't think the housewife associates the word "Procter & Gamble" with most of the Procter and Gamble brands. She buys the brands, not the company name.

Hearing Examiner Haycraft: She does not care who makes them?

The Witness: I don't think she knows who makes it. I don't think she knows most of the soaps and toilet goods products she buys, whether Lever makes it or Colgate makes it or Procter and Gamble or whoever. She is buying the brand name on the package, that is the physical entity that exists in her world that she works with every day, and the company is a remote thing generally unknown.

Hearing Examiner Haycraft: In other words, from your

Eric Bellingall—Direct

experience, your interpretation, it is a myth that Procter & Gamble has a reputation as a manufacturer of soaps, as far as the housewife is concerned?

The Witness: I don't say it is a myth that the company has a reputation. I am saying it would be that the

(Tr. p. 5091)

woman doesn't associate the manufacturer with the product.

Hearing Examiner Haycraft: How does she know about the manufacturer if she doesn't associate it with the product.

The Witness: I think we are asking two separate questions. If you were to ask a woman, do you think that Procter & Gamble is a good reputable company, you would probably get a fair positive response to it, and my contention is that if you ask them, does Procter & Gamble make Vel, you would get answers all over the lot, because they don't tie the brand back to the organization that produces it. She probably thinks Colgate is a nice company too, and Lever, but there is no identification of brand with the company, unless a company knocks itself out to attempt to achieve it.

* * * * *

(Tr. p. 5092)

* * * * *

By Mr. Royall:

Q. Mr. Bellingall, I believe before the adjournment there was a discussion about the identification of the name of Procter and Gamble with Clorox. Did you at any time recommend the identification of the two as a matter of advertising or promotion? A. No.

Q. Was it ever suggested to you that that be done?

Eric Bellingall—Direct

A. Never.

Q. Not by any source? A. No.

Q. There has been some testimony about a price-off offer. Have you recommended that Clorox increase this type of activity? A. No.

* * * * *

(Tr. p. 5094)

* * * * *

Q. Why have you not recommended the increase in this type of activity? A. Because the too frequent use of a cents-off device tends to break down your basic price structure, to cheapen the product in the eye of the consumer and by that cause a loss in the prestige of the product. When they become too accustomed to paying a lower price for it, it is very difficult to get them back to the basic price, the real price of the product.

* * * * *

(Tr. p. 5095)

* * * * *

Q. I hand you Commission Exhibit 538, which purports to show the number of 20-second and one-minute spots used by Clorox Chemical and Clorox during the periods indicated on the exhibit. Have you analyzed those figures from the standpoint of determining the relative frequency of the two types of spots? A. Yes, I have.

* * * * *

(Tr. p. 5096)

* * * * *

Q. Does this show that Clorox Chemical began using, at one time, a greater number of one-minute spots than they did 20-second spots? A. It shows—yes, that is correct.

Q. Can you tell us why Clorox Chemical, prior to the

Eric Bellingall—Direct

merger, began using a proportionately greater number of one-minute spots? A. Yes.

* * * * *

(Tr. p. 5097)

* * * * *

The Witness: That was done because in the agency's opinion—this is primarily the creative department's feeling—the one-minute spots make a better vehicle for the type of selling story we have to get across than do the 20-second commercials.

Hearing Examiner Haycraft: It is three times as long.

The Witness: It gives us more elbow room in which to tell the story, sir.

By Mr. Royall:

Q. Has that trend of more minute spots in relation to

(Tr. p. 5098)

20-second spots continued? A. It has been continued, yes.

Hearing Examiner Haycraft: Can you tell when it was you made this change of increasing from 20-second to minute spots?

The Witness: It would be about June or July of 1957 that we were able to procure more minute spots than 20 second.

Hearing Examiner Haycraft: In other words, just prior to the merger then, is that right?

The Witness: Sometime prior to the merger, yes, sir.

Hearing Examiner Haycraft: You say June or July and the merger was in August, wasn't it?

The Witness: That is correct.

* * * * *

Eric Bellingall—Direct

The Witness: May I amplify that, sir?

Hearing Examiner Haycraft: Yes.

The Witness: Initially we wanted—in the beginning, our idea was to have more minutes than 20-seconds. The type of television that we are using, spot TV,

(Tr. p. 5099)

you have to start a program, pick up whatever availabilities there are and gradually refine it to the end purpose for which you want the thing.

Now, initially it was difficult for us to get the one-minute placements that we required. 20 seconds were more readily available. We were constantly working to refine that thing, so we would have a greater proportion of minute commercials, versus 20 seconds and that cross-over point occurred, as I say, I would have to establish the date for you, but I believe it was about June of 1957.

(Tr. p. 5101)

Q. Now, is the total number of seconds indicative of the relative value or cost of the two types of spots? A. No.

Q. Was the comparative cost between a one-minute and 20-second spot, what is that?

A. Minutes and 20s cost about the same. In fact, in most stations they cost the same amount of money.

(Tr. p. 5102)

Q. Now, Mr. Bellingall, as between TV spots, and network TV, which is preferable for Clorox advertising?

Eric Bellingall—Direct

A. TV spots, as far as we are concerned. That is what we are using.

Q. Why? A. Because the flexibility of the spot TV enables you to adjust your advertising weight to the regional character of the market. On spot TV, for instance, we can put a certain amount of advertising impressions into a good market, such as New York, and not have to put the same amount of impressions into a very weak market, such as Milwaukee or Minneapolis. We can adjust the advertising expenditure, and the advertising penetration, to the local marketing circumstance.

Hearing Examiner Haycraft: Do I understand you correctly then, that you spend more money where you have a good market than where you have a poor one?

The Witness: We adjust our advertising expenditures quite frequently that way.

Hearing Examiner Haycraft: That is sort of a revelation to me. I would think you would spend more money where you are trying to build up a market. Why is it

(Tr. p. 5103)

that you spend more money in advertising where you have a big market than a small one?

The Witness: To support the business you have, sir, to protect the business you have. Under no circumstances would we spend, in Minneapolis, for instance, what we spend in New York, even a part—

Hearing Examiner Haycraft: Is that because you feel that regardless of the amount of money you spent there, you had a local situation you couldn't overcome?

The Witness: In many instances, that would be the case. In some circumstances we have attempted additional spending, in some of the poorer markets as a means of improving them. I think I mentioned the radio thing this morning.

Eric Bellingall—Direct

But basically, where you have a good market, you tend to spend in support of it.

Hearing Examiner Haycraft: By a "good market," do you mean where your product has a good reputation and your sales have been increasing in proportion to the increased expenditures for advertising?

The Witness: Roughly, yes.

Hearing Examiner Haycraft: But when you run into such situations, local situations, such as Minneapolis, where I think there is a local manufacturer—isn't there?

The Witness: Hilex has marketed in that territory.

Hearing Examiner Haycraft: Instead of trying to

(Tr. p. 5104)

break into that market, with your promotion, you sort of by-pass it; is that it?

The Witness: In effect, that is—in the past, we have attempted to do something about this, with additional expenditures. It has been an unresponsive market, to that kind of treatment. The same amount of money, expended in a market where you have good consumer acceptance, can very often deliver you a better return.

* * * * *

(Tr. p. 5108)

* * * * *

Q. Mr. Bellingall, even if the periods shown on Exhibit 546 were comparable, would the exhibit itself disclose or indicate the comparative cost and comparative value of these newspaper insertions? A. No, it would not.

Q. Why? A. Because when you reduce two newspaper schedules to the common denominator of number of lines, it fails to take into consideration the effectiveness and the circulation of the different newspapers that went

Eric Bellingall—Direct

into that compilation, and it also fails to take into consideration the cost of the two different schedules.

As an example, a thousand-line ad, from one period, would be worth a thousand lines, according to this computation, and a thousand-line ad from the '58 period would also count as a thousand lines, but if one of those thousand-line ads were in the Albuquerque Bugle, and the other in the New York News, obviously in terms of their comparative value or cost, they are not comparable.

* * * * *

(Tr. p. 5121)

* * * * *

Q. Now, the record shows at page 2366, of the transcript, that Mr. Kunin of Hood Chemical, referring to Clorox, mentioned that the manufacturers who consistently advertised in newspapers 52 weeks a year, had the advantage of strengthening his market position.

Can you tell how many days a year Clorox advertises in newspapers in Mr. Kunin's territory?

Hearing Examiner Haycraft: Where is his territory?

Mr. Royall: Philadelphia.

The Witness: In Philadelphia we advertise in 3 newspapers and in the fiscal year ending June '58 we advertised a total of 17 days during the year.

By Mr. Royall:

Q. Since the acquisition, Mr. Bellingall, have any suggestions been made, directly or indirectly to you, by Procter & Gamble, that Clorox spend more money in advertising and promotion than you have recommended? A. No, they have not.

Q. Has any suggestion been made indirectly or directly to you by Procter & Gamble that during this litigation you

Eric Bellingall—Direct.

should limit or hold back any advertising and promotional activities which you thought desirable? A. No.

(Tr. p. 5122)

Q. Has any such suggestion been made to you by anyone in Clorox? A. No.

Q. Or by anyone else? A. No.

Q. Have you limited or cut down in any way your recommendations as to Clorox' advertising and promotional activity because of the pendency of this litigation? A. No, we think we have promoted the product very aggressively, as a matter of fact. I hope we have.

* * * * *

(Tr. p. 5145)

Mr. Royall:

* * * * *

(Tr. p. 5146)

* * * * *

As a matter of fact, the government has asked us in written memorandum and orally to withdraw objections which we have already withdrawn and appear in the record to have been withdrawn, and they made the thing almost unintelligible.

We are almost tempted to raise a question of whether, in view of these developments, the withdrawals shouldn't be withdrawn, but we are not going to do that. From the list which the complainants have mentioned in their correspondence and conversation on the record, we, as a matter of good grace and under no obligation, will withdraw the following: Transcript 1701, lines 3 to 14; Transcript 1721, lines 8 to 10; Transcript 3197, lines 8 to 19; Transcript 3260, line 2; but we do this on the condition and with the qualification I have heretofore mentioned and

Eric Bellingall—Direct

with no implication that any other withdrawals will be made by us.

(Tr. p. 5158)

Room 332
Federal Trade Commission
Washington, D. C.

Met, pursuant to adjournment, at 10:05 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

(Tr. p. 5159)

PROCEEDINGS

Eric Bellingall

resumed the stand as a witness for the Respondent and, having been previously duly sworn, testified further as follows:

DIRECT EXAMINATION (resumed)

Hearing Examiner Haycraft: As a result of considerable thought on the matter we were discussing yesterday, while I still feel I am right, I think probably in order to get the picture before the Commission so that the Commission will be able to pass on it, with all the facts before it, I am going to reverse my ruling to this extent, that I will allow Commission's counsel to cross-examine the witness on the offer of proof, that is, the facts that were set out in the offer of proof and let the offer of proof and the cross examination stay in the record subject to a motion to

Eric Bellingall—Direct

strike at the end of the case and then at that time both your direct examination and his cross-examination will be in there and then there will be no question of having to come back again to take the testimony, if the Commission says I was wrong.

In other words, it is a little more than an offer of proof because by allowing counsel in support of the

(Tr. p. 5160)

complaint to cross-examine the witness, you will have both sides. In other words, he may question the witness as to what was actually said and done and so forth.

(Tr. p. 5161)

Hearing Examiner Haycraft: All right.

It might be a good idea, also, in order to expedite it, for you to ask him one question, the thing that I summarized as your offer yesterday, to get it in here now in the direct testimony. I am sure from your notes you can frame the question as you covered the whole thing.

Mr. Royall: I am going to ask him these new questions, your Honor.

Hearing Examiner Haycraft: All right.

By Mr. Royall:

Q. Mr. Bellingall, in the transcript of yesterday you testified that certain countering local or regional promotions were used after the acquisition but had not been used before. Why were they not used, not implemented before

(Tr. p. 5162)

the acquisition?

Eric Bellingall—Direct

The Witness: Because the types of circumstances for which these promotions had been planned had not, in our opinion arisen during the period referred to.

By Mr. Royall:

Q. Was it your general policy to use counter promotions, or was that done only where specific circumstances made it seem necessary to you? A. I think the name "counter" carries the key to that. You don't use a counter promotion in a general sense. By that I mean, in a broad-scale sense. It is a different breed of cat, a different type of promotional device from the national things that we had been using. We use them only when a specific circumstance—by that I mean the threat of competitive activity in a localized area causes a counter effort to prevent erosion of your marketing

(Tr. p. 5163)

position in that area.

Q. Did the implementation of these plans after the acquisition in any way increase the per share expenditure for advertising and promotions, per case?

* * * * *

A. No, they did not. We spent at the same rate per case, if that was your question, before and after.

Q. Now, referring again to these local or regional counter promotions, had anything been done as to those before the acquisition? A. Yes.

Q. What? A. Well, we planned them; we evaluated them; that is, considered the respective merits of one type of promotion versus another, and there are sort of circumstances under which each one might be applied.

Perhaps, more specifically, for instance, we had designed cents-off labels which were furnished to the client indi-

Eric Bellingall—Direct

cating the precise manner in which the label would have to be redesigned in order to accommodate this cents-off

(Tr. p. 5164)

device. We alerted our premium section to dig up premiums that would be suitable to this type of product.

Mr. Trimpe sent over to us materials and promotional devices that he thought might be of interest. I remember one, one of the Stokely-Van Camp materials. I think it was a kind of beans that had a self-liquidating premium of personalized stationery on it. We rejected that one as not being appropriate to our type of product.

Another thing that we considered was the use of a nylon diaper cover. This was back in the time, as I had previously related, when we had a nylon-rayon promotion and thought there would be appropriateness to tying in with this. We checked this out through one of our creative people with the store buyers in San Francisco department stores to determine if there was any wide-spread consumer interest in this type of product. Apparently it wasn't an item that women were responding to very much, so we dropped that one.

Another device was a dish cloth that we had considered as early as 1955, not as a self-liquidating item, but as a free premium, a give-away with the product. We didn't use it at that time; we weren't confronted with a situation that we thought called for it. But later on, when a more acute situation arose in Los Angeles, we did use a dish cloth free premium.

(Tr. p. 5165)

Q. Now, as the reasons why you didn't use them before the acquisition, the same as you previously stated, there was nothing that arose that required it? A. That is correct. That is right.

Eric Bellingall—Direct

(Tr. p. 5167)

* * * * *

By Mr. Royall:

Q. In your discussions with Mr. Trimpe, in 1955, which you have previously referred to, did you in addition to the nation-wide promotions which you have previously mentioned, also consider and discuss and plan for possible use for countering purposes any other promotions? A. Yes.

Q. And would you name such other promotions? A. The types of localized counter promotions that we had considered had been the one-cent sale, the dealer premium, the free merchandise pack, couponing devices, newspapers

(Tr. p. 5168)

and couponing on the bottle, again, self-liquidating premiums, and contests. I think those are the only ones.

Q. Did you refer to price-off labels? A. Price-off labels, definitely; yes.

Q. Now, did you at any time thereafter and, say in the year '56, consider with Mr. Trimpe the type or label on a new type bottle? A. Yes.

Q. When was that? A. That was in 1956 as a consequence of a competitor coming out with a new bottle size. We reacted to this with a development of such a bottle ourselves which necessarily incurred the development of a special label for that bottle since it was a size that had not heretofore been in the Company's line.

Q. Now, were the bottles also actually manufactured? A. Yes.

Q. Were they ever used? A. No, they were not put on the market place.

Q. Why? A. Because in the time between the competitive introduction of this special size and the Clorox

Eric Bellingall—Direct

Chemical Company's development of its own bottle sufficient evidence had arisen that there was a great deal of resistance on the part of the grocery trade to carrying this additional size, and

(Tr. p. 5169)

therefore, it was our judgment that we should not go ahead and try and introduce this new bottle, it was a three-quart size, into the market.

Q. That was despite what you made preparations for?

A. That was correct.

Q. That was a three-quart bottle, you said? A. Three-quart.

Mr. Royall: Your Honor, that is the only questions I have.

CROSS-EXAMINATION

By Mr. Tinch:

(Tr. p. 5179)

Q. Now you also said at that page there was aggressive competition in most of the area in 1947. Who was that aggressive competition? A. Well, traditionally, our most aggressive competitor has been Purex.

Q. And that was true in 1947? A. Yes, that is right.

(Tr. p. 5180)

Hearing Examiner Haycraft: Purex was not in all your markets?

The Witness: No, sir, I couldn't give you a percentage breakdown as of 1947. I think that at the present time, they meet us in somewhere in about 45 percent, in the areas where 45 percent of our business is derived, and it would have been, I think, substantially the same percentage

Eric Bellingall—Cross

at that time. Now in addition to Purex, of course, there were other competitors. Hilex, in Minneapolis, was stronger than we then, and still is. Linco has traditionally been a strong and aggressive competitor in the Chicago-Milwaukee area. Roman Cleanser would be another product that started in Detroit, and moved out and gained additional areas and has been a strong competitor, A. Sani-Clor is a——

Q. You understand you are talking only about 1947?

A. Yes, and there would be others.

* * * * *

(Tr. p. 5187)

By Mr. Tinch:

Q. Now you testified yesterday, sir, that you took funds going into promotional allowances and converted them into new competitive advertising. Do you recall that? A. Yes, I do.

Q. What is competitive advertising as distinguished from the type that was being used? A. My reference to the term "competitive advertising" was as distinguished from advertising that was more educational in character. This was essentially the major company change that was initiated shortly after I came in the company, and I came there in 1947. The difference is this: Educational advertising is more to educate the consumer to new uses of the product and by competitive advertising, I mean advertising directed at establishing the superiority of the product over other brands in its market. One tends to promote the sale of bleach, per se, the other has greater emphasis upon a particularized brand of bleach. That was the frame of reference in which I was speaking.

Q. Well, which is the nylon-rayon advertising that was engaged in? A. The nylon-rayon advertising, we at-

Eric Bellingall—Cross

tempted to make just as competitive as we could, because we wanted to attribute this newly discovered consumer benefit as much to our product as we could. In fact, there was a patent applied

(Tr. p. 5188)

for in connection with the ability of Clorox to get out this yellowing effect that nylon is subject to, and we did, working from that springboard, try to make a claim, as exclusive and beneficial to our own brand as we could.

* * * * *

Q. Mr. Bellingall, this patent that was applied for, was in reality a patent on a recipe of mixing Clorox with vinegar, was it not? A. That is correct.

Q. It was not on the Clorox product itself? A. No, it was on the combination of the use of Clorox with vinegar, to whatever was in the vinegar, ascorbic acid or something, that together worked to get this yellowing tinge out of any nylon. I remember at that time, that chemists from DuPont, which was a primary source of the nylon material,

(Tr. p. 5189)

came out to Clorox to investigate this thing, and were surprised and pleased that so simple a device had been devised to rid them of a problem that had apparently been quite a persistent one.

Q. Was that recipe something developed by Clorox research? A. Yes.

Q. And whose department would that Clorox research be? A. At that time that would have been Mr. Larry Barton, who was the vice president in charge of their technical work.

* * * * *

Eric Bellin gall—Cross

(Tr. p. 5190)

* * * * *

Q. Now, in 1955, what was this intensified competitive activity and who was engaging in it? A. It was felt by us, primarily from Purex in many of the areas, where we meet Purex—I say “many”—in some of the areas in which we meet Purex, they occupy a superior market position to us. In particular, in the Pacific Northwest, they had been giving us a bad time. They had a better share of the market in Los Angeles, which was one of their home territories, or at least where they began. We had observed an intensified use of certain promotional devices.

I remember at that time they had been, let me see, this is 1955—

Q. Yes, sir; that is what you testified to. A. (Continuing) —using in San Francisco, and I think that was the year or just about that time, a cash give-away contest wherein the first thousand people to write in in response to some newspaper advertisement that they ran, would get a dollar. I think it was suggested a new use for Purex, and the first thousand to write in got a dollar and a coupon, something of that type.

The competitive activity, of course, wasn't confined to that one brand, I could get other instances:

Q. Yes, let's have all these instances, which were causing

(Tr. p. 5191)

this intensified competitive activity in 1955? A. The other area of intensified activity that I mentioned there was that of the growth that the private label thing. We had become increasingly aware, as a consequence of Clorox distributors and their salesmen sending in reports from the field that the private label problem was a developing one,

Eric Bellingall—Cross

and this was a matter of deep concern to the Clorox Chemical Company because of its obvious implications.

The manufacture of a private label normally sells at a considerable price differential and since he is controlling the outlet, as well as the brand, is in a position to give it favorable promotional backing in the store and additional shelf space.

Q. How do you know that, sir, that it is given favorable shelf space? A. I think that is a common-place—I don't know the precise date when I first came to that knowledge, but we are—I have been aware of this for some time.

Q. Was it through your own organization or the Clorox organization? A. Yes, I have indicated some of the sources that we have for getting this information about in-store activity. It is quite general, I think, for a private label to receive a share of shelf space that is greater, as a rule, than its consumer demand would require.

(Tr. p. 5192)

* * * * *

Hearing Examiner Haycraft: How do you know what the private brand sales were?

The Witness: Well, that is a pretty good question, your Honor. I can give you an instance of that. There is a supermarket about a block from our office in San Francisco, it is called the "Big Boy Supermarket." They have a label that is sold only in that store, and we have observed occasions in the past where they have had a ratio of six to one over us in shelf space, and I have much doubt that they would have any such ratio in terms of sale.

Hearing Examiner Haycraft: You might very well doubt that, but what do you know about it?

The Witness: I do not have sales figures.

Eric Bellingall—Cross

Hearing Examiner Haycraft: In other words, you have formed that opinion based on your observation without knowing what the actual sales figures were for the various stores?

(Tr. p. 5193)

The Witness: That is right, yes.

* * * * *

(Tr. p. 5196)

* * * * *

Q. Now, do I understand correctly that the only promotions which have been used subsequent to August 1, 1957, by the Clorox Company are coupons, either on the bottle or in newspapers, self-liquidating premiums, dish cloth premiums and price-off labels? A. And the national promotions that we had mentioned previously, that were subsequent to 1957.

* * * * *

The Witness: Let's see, we have self-liquidating

(Tr. p. 5197)

premiums, the merchandise premium, the price-off labels, and coupons. I believe those are the only forms of promotion we have used since that date.

* * * * *

(Tr. p. 5198)

* * * * *

Q. Mr. Bellingall, let's talk for a while now about coupons used since August 1, 1957. Where had coupons been used?

* * * * *

A. I would have to check the distributor's territory. I don't commit this detail to mind, but we have used a coupon on the label, "Good on the next purchase of a bottle

Eric Bellingall—Cross

of Clorox," and have used, in addition, a newspaper coupon good on the current purchase of a bottle of Clorox. The coupon on the label was used in some of the Pacific Northwest territories, and a newspaper coupon—I would have to check as to the area where we used that.

By Mr. Tincher:

Q. Now, this newspaper coupon, was that a coupon for eight cents off? A. The eight cents off, my recollection, the eight cents off is the label coupon, good on the purchase of your next bottle of Clorox.

Q. And then did the grocer get that eight cents off plus

(Tr. p. 5199)

two cents for handling the coupon? A. Whatever the standard redemption rate is. I think it is at the two-cent level.

(Tr. p. 5200)

Q. Was this eight-cent coupon used other than the Pacific Northwest? A. It may have been. I can get that for you if you want.

Q. Why was it used in the Pacific Northwest? A. It was used as a counter to the introduction of the new Purex bottle up in that territory. We had troubles enough without that.

(Tr. p. 5202)

Q. All right, now, you said something about newspaper coupons. You didn't know where they were used; is that right?

Eric Bellingall—Cross

(Tr. p. 5203)

A. We have run a newspaper coupon in this first half. I don't recall the distributed territory in which we did it.

Q. And was that an eight-cent coupon, also? A. I don't remember.

Q. What was supposed to happen with this coupon?

A. That is a coupon run in a newspaper advertisement. The housewife clips it out of the newspaper, takes it to the store and redeems it on the initial purchase of a bottle of Clorox.

* * * * *

Q. You don't know the area, so you don't know why you ran it. Or do you know why you ran it? A. Yes, I know why all the coupon things were run. We had these three or four separate promotional devices, not only this coupon on the bottle and the newspaper coupon, but the price-off label, and the merchandising pack, and the self-liquidating premium that had been mentioned, and these were put on at different localized areas throughout the country as Purex introduced its new bottle into that territory.

Q. Well, that is what I am trying to find out, sir. Were all these post-acquisition promotions of couponing and the

(Tr. p. 5204)

local and regional type promotions, are those all aimed at Purex? A. No, there is an exception to that. We had a price-off label—this was five cents on gallons—that we ran and I think in nine districts in the Midwest. Our gallon distribution has never been too good there, and we had been subject to a series of five cents off on gallons promotions by Linco and Roman Cleanser, and we ran this counter promotion of the price off on the gallon size in these restricted territories in the Midwest.

Eric Bellingall—Cross

The others were, the other promotional devices we have used since August 1st, with the exception of the national promotions, which are broad scale, have been put on as counters in localized areas as Purex introduced this new line of bottles.

Q. Now, Linco and Roman Cleanser—it is your experience in 1947—have had these five-cents-off deals, have they not? A. They have been giving us hard competition since then. I don't believe I mentioned any five-cents-off offers specifically in 1947, but their activity along those lines has intensified later.

Q. When did that start, sir? A. Well, I can remember sending over to Mr. Trimpe on a number of occasions notification that we had received from

(Tr. p. 5205)

our clipping service of competitive bleach manufacturers' advertisements where attention would be called to these five-cents offers. I would compile these and send them over to him. Now, there have been two or three of those. I couldn't—the dates of them I don't recall. Now, Linco, I know, uses them periodically.

Q. In your possession you have all these coupons and have had them—not coupons, excuse me, these advertisements of various competitors? A. Yes.

Q. Now, where were these six Midwest districts that you spoke about and what do you have reference to as a district?

A. Well, these would be distributor's territories, and run from Chicago around to some of the Roman Cleanser territory in Michigan. It would be confined to an area around there. I can get the precise list of distributed territories, if it is required.

Q. All right, sir; thank you. We don't require it. Maybe your lawyer will.

* * * * *

Eric Bellingall—Cross

(Tr. p. 5207)

Q. Now, who was the self-liquidating premium aimed at which was used nationally in the Spring of 1958 drive?

A. In the Spring of 1958, you have reference there to the laundry dampening bag?

Q. Yes, sir. A. This was aimed at the basic concept of our national promotions that I have discussed previously. It is aimed at developing a volume increase for us across the board and of refreshing in this case the spring promotion that we had started prior to that. Our premium section had investigated a whole bunch of premiums and came up with this particular one, which on judgment, appeared to us to be one that was excellent for our purposes, primarily because it had good tie in value with the product, a laundry dampening bag, that wet clothes could be put in, kids bathing suits and so on, that was selected by our premium section and checked out by them and run in the Spring of 1958.

Q. Well, what I am trying to determine, is this what you would call a constructive promotion as contrasted to a counter type promotion aimed at a given competitor? A. Your nomenclature is new to me, but this is not a counter promotion. That is correct. It is in the different category that we spoke of. Our national promotions moving towards developed uses and increases in volume, yes, sir.

Q. Is not one of the objectives of a counter promotion

(Tr. p. 5208)

also an increase in volume of the product to be promoted?

A. Well, its primary purpose is to avoid a decrease in volume. Counter promotions, as we conceive of them, are a research of promotions that you can use when you are confronted with a particular competitive activity that you consider detrimental, and that was not the case in the use

Eric Bellingall—Cross

of the laundry dampening bag. That was in a different category as far as we were concerned.

Q. All right, sir. Now, has the Clorox Company since August 1, 1957, ever used a constructive promotion in a region or a section as distinguished from a counter promotion against another competitor? A. Well, our so-called constructive promotions as you have determined them, have been confined to the national level, that is we have put it on more or less every territory across the boards. We like to minimize costly promotions as much as we can and put the money in the advertising in the long range development of the consumer acceptance of the brand.

Q. Well, is your answer to my question then, no, we have not had the constructive type of promotion in the regional and sectional level? A. We have employed none since August 1, 1957, other than the counter promotions that we had previously conceived, yes, sir.

Q. Now, who were you countering in Chicago with a cents off label on the Clorox liquid bleach?

(Tr. p. 5209)

A. Linco.

Q. Nobody else? A. Linco is the big problem there, and the ones that have been using the cents off offer on their large size to the detriment of our gallon sizes particularly.

Q. Now when you say that it has been to the detriment, is that based on Nielsen market shares or something constructive? A. Actually, in this instance, it is based on a report of our marketing director, who had gone back there to look at this poor situation that we had there, and to make recommendations to see if something couldn't be done about it and his recommendations to me and consequently mine to the client was that Linco activity had to be met in kind.

Eric Bellingall—Cross

Q. When was this? A. This was in the first half of 1958. The precise date of his trip, I don't know. Is that what you want the date of his trip or when we put it on? Both would be in the first six months of 1958.

Q. All right, sir. A. I can get you the date on it, if you want it.

Q. Now, the same question, with respect to the Atlanta Georgia situation, where there were six cents, four cents, and two cents off the label of various sizes of Clorox?

A. That would be six cents, gallons, four cents, half gallons, and two cents across. I think that is the one you

(Tr. p. 5210)

have reference to. This price off label promotion in the Georgia region was a counter to the introduction by Purex of its new bottle in that area.

Hearing Examiner Haycraft: How long or how much of an inroad, as you call it, does a local competitor have to make before you turn on your promotion?

The Witness:

We have used as different devices, price off labels, the coupon on the bottle, the newspaper coupon, and so on, and in some territories, we did not meet it with a promotion, but tried to meet it with whatever increase there was in an advertising schedule.

Hearing Examiner Haycraft: No pattern then?

The Witness: No, sir, no. I think I see now a little closer to your Honor's point. Sometimes we won't wait for the full effect of the competitor's promotion to take place with the consumer, that is, if he moves with a promotion, we may elect to move simultaneously or as close to simultaneously as we can. In other instances, and this can depend on holidays and so forth, we wait until we get a

Eric Bellingall—Cross

(Tr. p. 5211)

better reaction from our distributors in the area, and then try to go in to prevent the second purchase. Am I clear there, where a promotion might do a sampling job for the competitor and we would move against the time that we would judge that the woman would be going back for a second bottle. We don't want her to be setting up a habit of purchasing the thing that she has been temporarily attracted to by a promotion, so there is a variety of timings in this activity.

(Tr. p. 5212)

By Mr. Tincher:

Q. Do you know when this Atlanta situation was, when your price-off labels took place? A. In 1958, the majority of these ran—they were keyed by when Purex hit the territory. The great majority of them ran May, June, I think some of them ran over into July, and into this quarter, the second half of 1958. I can get you the date of the Atlanta promotion.

Hearing Examiner Haycraft: Following that program, it is pretty hard for a small concern to get toe-holds, isn't it?

The Witness: I think they have gotten their toe-hold, Your Honor.

Hearing Examiner Haycraft: To increase their share of the market, will we say?

The Witness: For the most part, I think promotions tend to have a temporary effect anyway. They are a shot in the arm thing. You put on a special inducement on your product. You are very likely to get some immediate reaction from a price-minded buyer. If one brand fails to make any counter at all to this, either in the form of advertising or getting across a better quality concept, or promo-

Eric Bellingall—Cross

tion, then it is subject to a constant nibbling away of its share.

Hearing Examiner Haycraft: They hope to retain some of the new customers.

(Tr. p. 5213)

The Witness: I think that is the basic idea of it. They know they are not going to retain all of it. Experience proves that out, but they hope they might jump to a sudden ten percent increase and retain some portion of that. You can't counter them all when you have them all over the lot.

By Mr. Tincher:

Q. Is every time any liquid bleach producer tries to expand his territory or improve his product or improve his distribution or his marketing service, is that considered an attack by the Clorox Company which demand a counter-ing measure?

* * * * *

The Witness: Well, we have no control over his improving his product. We could cite many more instances of not countering a localized promotion than we can cite of countering. In fact, if we could do without countering, we would be happy to do so. Long range, we feel that the development of our brand consists of developing and enhancing the product image in the mind of the consumer.

* * * * *

(Tr. p. 5214)

* * * * *

By Mr. Tincher:

Q. My question, is that your objective, now in keeping that objective in mind, is every expansion in the territory by a liquid bleach competitor or the introduction of a new bottle or the introduction of a promotional campaign in an

Eric Bellingall—Cross

existing locality, is that considered something which Clorox should counter? A. It is considered the introduction of a product into a territory that it had not previously been sold in, is certainly considered a matter of deep concern to us, because particularly, obviously if we are in the area, and they start to move into that area, we take whatever means we deem necessary to protect our business. You mentioned quality, earlier, that is something we can't control. They can improve the quality of their product beyond any influence that we would have on it. The matter of promotion, I believe I have covered, that is every time a competitor puts a promotion on, we do not respond in kind or necessarily at all, because we can't. There are just too many of them going on in the bleach industry all the time, and we have to be selective in our judgment of which ones of those are most likely to be detrimental to our position.

* * * * *

(Tr. p. 5215)

* * * * *

By Mr. Tincher:

Q. Now, when was the dishcloth used as a premium in Los Angeles? A. That was in May, and I am delighted to remember one date specifically for you, May 1958.

Q. And why was that used, sir? A. Again, this was Purex's introduction of its new line of packages in that area.

Q. How long has that continued? A. That was about a month.

Q. Was that a dishcloth fastened right to the bottle of

(Tr. p. 5216)

bleach? A. That is correct.

Q. Was that on all sizes of Clorox or just certain sizes?

A. We tried to—I am not certain. We generally try to

Eric Bellingall—Cross

encourage the purchase of the larger sizes for obvious reasons, and most of these things are confined, couponwise, and pricewise, to the larger sizes. This one may have been on all three. I don't know whether this is in the record or not, what size it was on.

Mr. Royall: I wish I could tell you. I can't remember those dates.

By Mr. Tinch:

Q. All right, sir. Now, turning to San Francisco, to cents-off coupons there, when were they? A. That was about that time. I think, my recollection is June of 1958. These things occurred pretty much within a limited time spell, because they were moving ahead quickly to put this new bottle into new areas and in San Francisco, we used the counter of the cents-off label. I believe it was a 2, 4, 6 again.

Q. All right, sir. Now, how about the cents-off labels in Chattanooga, Tennessee, when were they utilized? A. I don't have the date, it would be in the same general time period, the middle part of 1958, whenever it was that we countered their move into this market.

(Tr. p. 5217)

Q. That was aimed at Purex? A. Aimed at Purex, yes.

Q. How about in Nashville, Tennessee? A. That is the same thing.

Q. The fact that Texize entered into Nashville, was not one of the reasons for this couponing in this promotion in Nashville then? A. What was in Mr. Trimpe's mind about that, I do not know. We drew up a list and had ready a group of these promotions and we got a list of dates when Purex was moving across with its bottle.

Eric Bellingall—Cross

far as Texize is concerned and Clo-White, is concerned, both of them had been giving us difficulty in southeastern areas previously, which was why we tried to do something about it with radio before this.

Q. What was that, back in '55? A. 1956.

Q. Now, when was the apron premium used in the Southeast? A. The apron, the clothespin apron premium was used in the fall housecleaning promotion of 1958, and this was the premium that was used generally on a national scale. I say generally on a national scale, because there were some territories where, because of the Purex activity, we already had a promotion going, so where we had one, why we did not use the apron premium additionally, but with those few exceptions, it was a national promotion for us, the clothes-

(Tr. p. 5218)

pin apron.

(Tr. p. 5242)

By Mr. Tincher:

Q. Yes, sir, and can you tell us approximately when in the year 1957 the radio was dropped? A. I could tell you precisely if I had my record here.

(Tr. p. 5243)

Hearing Examiner Haycraft: Was it at the end of that fiscal year?

The Witness: It began in 1956—I am hazarding a guess, our media director who would have this at his finger tips—my recollection is that we began in the latter part of

Eric Bellingall—Cross

1956 and that it ran from, oh, for a period of some nine months to a year.

By Mr. Tincher:

Q. Do I understand correctly radio was abandoned at the end of that period because the situation had not improved any? A. In our judgment, the radio was not doing a sufficiently effective job to warrant its continuance.

Q. Was that once again based on Nielsen? A. It was based on Nielsen and certain field checks that we made, sending a man out from our office to investigate distribution patterns in the Southeast territory, and on reports coming to Mr. Trimpe for that from distributors as to the reaction in the areas where we had been directing the radio.

* * * * *

(Tr. p. 5256)

* * * * *

Q. Now, sir, you testified to the current rate of spending for advertising and promoting "what is adequate for the task confronting this brand of Clorox in its own industry at this time." Now, what are those tasks, sir?

* * * * *

(Tr. p. 5257)

* * * * *

The Witness: The basic task confronting us as advertising counsel is the maintenance of the brands' position in the market.

By Mr. Tincher:

Q. And that is the extent of your objective? A. We have what we consider supplementary tasks, some of which are indicated by aspects of our national promotions—namely, the education of the housewife to the multiplicity

Eric Bellingall—Cross

of uses of the product, with the idea of encouraging uses of Clorox above and beyond its traditional long-range function.

Q. Well, do you have any objective to increase Clorox's market share rather than just to maintain Clorox's market share? A. Well, we have our hopes in that direction. The expectancy is not too great when you have a brand that has a share position as Clorox has. It is difficult to increase share against aggressive competition.

The main secondary objective of our marketing strategy, as a matter of fact, is to increase the consumption of bleach in the non-laundering applications. One of our objectives is the introduction of a second bottle into the home for

(Tr. p. 5258)

those purposes.

Q. All right. A. I think you will find this in our advertising.

Q. With reference to the statement that it is difficult to increase market share of Clorox against its competition, that is assuming a constant amount of expenditures for advertising promotion, is it not? A. Well, actually we haven't had a constant amount of expenditure. We have had rather a fairly constant rate per case expenditure and it has been fairly constant, over a period of time, because it has been accomplishing some of these objectives that I have stated, namely, maintaining our market share by the annual development of additional casage, of additional volume, on the ground that you require to maintain your share in an expanding market.

* * * * *

(Tr. p. 5259)

* * * * *

Eric Bellingall—Cross

Q. Now, you testified that increased expenditures per case for advertising and promoting would not have been economically sound for Clorox; is that correct? A. It is correct that I have so testified, yes.

Q. Do you have any proof of that as contrasted to your personal opinions? A. Any proof of it?

Q. Yes, sir. A. My personal opinion is that the case rate was right, and the proof of it would be the record of the company during the years that we have been doing this. I don't know of any other proof that argues better for the expenditure as it has been done over a period of years.

Q. And since the acquisition you have not increased that case rate; is that correct? A. That is correct.

* * * * *

(Tr. p. 5261)

* * * * *

Q. Now you have testified, sir, that local manufacturers can obtain TV spots at a rate lower than a national manufacturer, as you said in numerous instances? A. Yes.

Q. What is your definition of a local manufacturer and of a national manufacturer? A. Well, it might be better if I gave you the stations' definition. Would that—a national advertiser is one who advertises nationally and the television stations so define it. Clorox is a national advertiser and as a consequence, received its advertising from TV stations at the national rate, even in its home-headquarters of Oakland; a local advertiser is defined differently by different television stations. Some local TV stations confine the interpretation to a manufacturer-advertiser in the community, that is, in the city limits. Others consider it over an area of counties, there are some that will include manufacturers

Eric Bellingall—Cross

(Tr. p. 5262)

in the same state as being defined as local. We have encountered some TV stations in the Northwest that lump the states of Washington and Oregon and consider that as a local manufacturer. By that I mean, that if you produce and advertise in either Washington or Oregon, a particular station up there, will consider you a local manufacturer, and give you the local rate as opposed to the national rate.

* * * * *

(Tr. p. 5266)

* * * * *

Q. You stated since the acquisition there has been a growth of private labels, is that correct? A. There has—I thought I said that since 1955 there has been a continuing increase in private label activity. Did I say since August 1, 1957?

Q. What you have just said now is what you meant to say, is that right?

(Tr. p. 5267)

* * * * *

The Witness: From 1955, it is my understanding and belief that there has been a growth in private label activity, yes.

By Mr. Tincher:

Q. All right, has that fact changed any since August 1, 1957? A. I think that trend that I discussed has continued. I say that because of reflections by Mr. Trimpe of field reports that he has gotten from his distributors as to new chains putting out private labels under their own aegis.

* * * * *

Eric Bellingall—Cross

(Tr. p. 5276)

The Witness: I have here two rate cards for KBH TV, Denver. One is designated "General Rate Card Number 8, effective October 1, 1958."

Hearing Examiner Haycraft: Let's give that a number, please, before we go any further.

(Whereupon, the documents referred to were marked Commission's Exhibit 647 for identification.)

The Witness: That is the general rate card. I have another rate card from the same station, KBHTV, designated "Local Rate Card Number 7, effective October 1, 1958." The general card gives a national rate, and the local the local rate.

Mr. Tincher: We will have the local one marked 648.

(Whereupon, the document referred to was marked Commission's Exhibit 648 for identification.)

* * * * *

Q. My question, sir, where on these will I find this station's definition of a local advertiser and of a national advertiser? A. I don't know if they so define on their rate card.

Hearing Examiner Haycraft: Well, do you recognize them as what you just said?

The Witness: Yes, sir, sir, one is general and national rate card and the other is a local rate card, with

(Tr. p. 5277)

their rates for the comparable periods of time.

Hearing Examiner Haycraft: Can you give us comparable rates in the same thing between the two cards?

The Witness: Well, yes, sir.

Eric Bellingall—Cross

Hearing Examiner Haycraft: So we will know what you are talking about.

The Witness: Do you want an example, your Honor?

Hearing Examiner Haycraft: Yes, sir.

The Witness: For instance, Class AA, this is from 7:00 to 9:00 p.m., a one-time announcement on the national rate for either a 60 or 20 second commercial would cost \$235. I am sorry, that is a poor example, because they don't have Class AA on their local rate. Let me get one. I can compare directly. Here is one. Take another time. Yes, sir, they have Class A for both the national rate and the local rate. A one-time announcement in their Class A time would cost \$205 on the national rate, \$160 on the local rate. 60's and 20's cost the same.

Another example, the Class C commercial on the national card would cost \$55 against \$50 for the local card. 60's and 20's cost the same in both instances.

Hearing Examiner Haycraft: Is it a fact that there are a number of classes like you just mentioned that is on the national rate card that is not on the local?

The Witness: The lettered designations, sir,

(Tr. p. 5278)

indicate the hours. For instance, the Class AA, from 7:00 p.m. to 9:00 p.m., would be non-preemptive, that is, if you are buying it on a network basis, you can't be preempted from that time.

Hearing Examiner Haycraft: In other words, if you had that on a national basis, the local can't get into it?

The Witness: That is right.

Hearing Examiner Haycraft: Is that true of any other period of time?

The Witness: It might vary from station to station. They have Class A, Class B, Class C times available on their local card. Those same three classes, plus Class AA

Eric Bellingall—Cross

for their national card, because the only ones who would be buying the national card at the national rate would be a national advertiser.

I think the essential point here is that a national advertiser who is buying a spot on that station has to pay more for it than a local advertiser who is buying an individual spot on that station.

By Mr. Tincher:

Q. And, sir, the time which could be preempted by local manufacturers or local people on the local card rate is considered prime time, is it not, the best time for advertising with TV spots? A. It is, certainly the most costly. Whether it is the

(Tr. p. 5279)

best or not would depend upon the advertiser. The prime time is the non-preemptible time reserved by the network for its major transcontinental shows.

* * * * *

(Tr. p. 5288)

* * * * *

Q. And whose decision was it, if you know, to have Procter & Gamble redeem coupons of Clorox? A. At the time, we were discussing the types of promotions that we had planned and were ready to activate, to put into effect in the field, the question arose as to whether we would have the coupons collected by a coupon collection agency, such as Reuben Donnelly, or R. H. Donnelly, or a local collection service, and the advertising department of

(Tr. p. 5289)

Clorox, Mr. Shaver stated Procter & Gamble had such a facility for collecting, and that why not go through that?

* * * * *

Eric Bellingall—Cross

(Tr. p. 5290)

* * * * *

Q. Now you have said with most of the P&G brands. Are there brands then in which you believe the association does exist?

A. No, as a matter of fact, I don't know of any P&G brand that I can think of, from my observation in the market place and the checks that we get from our field people, that makes a continuing point of the proprietorship of the brand. I have no doubt that the name "Procter & Gamble" appears some place, for instance, on a package of Tide, but in comparison to the weight given to the brand identification, it is insignificant and I think the housewife's loyalty is directed towards the Tide name rather than the other. That I very strongly believe, and that is what I said before.

* * * * *

(Tr. p. 5297)

* * * * *

Room 332

Federal Trade Commission

Washington, D. C.

Wednesday, 7 January 1959

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 5298)

PROCEEDINGS

* * * * *

Eric Bellingall

resumed the stand as a witness for the Respondent and,

Eric Bellingall—Cross

having been previously duly sworn, testified further as follows:

CROSS-EXAMINATION (resumed)

By Mr. Tinscher:

* * * * *

(Tr. p. 5303)

* * * * *

Q. Now, you stated that initially it was difficult for the Clorox Chemical Company to get one-minute TV spots. Why was it difficult, sir? A. It was difficult only in this sense: There were less one-minute availabilities at the time that we went into the spot TV. The way this is done is when we decide upon a spot TV schedule, our media people contact the individual television stations on which we have decided to run schedules. They ask these stations for their rates and for their current availabilities in both minutes and 20s. They select from those availabilities the particular pattern that they think will best suit us; that is, the times of day and the adjacent programs that they think will command the best audience. Minutes are traditionally scarcer than 20s. I think that is a truism in most media buying.

(Tr. p. 5304)

So you start out getting the spots that the best availabilities that you can for your purposes and then, as different availabilities come up, start refining it to come out more to the end objective that you had in mind.

I believe I mentioned earlier that our company media department felt that a minute would be a better vehicle for carrying our particular sales message at this time than 20s. We wouldn't want one hundred percent minutes, but we would like a balance in favor of minutes over 20s

Eric Bellingall—Cross

for the message. We make up both sixty-second and twenty-second commercials.

* * * * *
(Tr. p. 5316)
* * * * *

Hearing Examiner Haycraft: What was your testimony with respect to the use of TV time by Clorox?

The Witness: That is a general question; you mean, why we use TV spots as against network?

Hearing Examiner Haycraft: Yes.

The Witness: We prefer to use TV spots for Clorox rather than network because basically the greater flexibility of spot TV fits what is in effect a flexible or regional pattern of our product in its industry. We have some markets where we have a substantial share of market.

(Tr. p. 5317)

A great many consumers buying our brand in that area. We have other markets where we have extremely limited distribution and have poor consumer acceptance.

To purchase network TV which would in effect deliver the same amount of advertising into these very uneven and dissimilar areas, we would consider to be an economic waste. With spot TV, we are able to adjust the level of advertising that we put into a market to the amount of business that we are supporting in that area.

By Mr. Tincher:

Q. All right, sir. Now, my question is: Do you have any national TV programs, so you will know whether or not what you say is your opinion in this case is correct?

A. In answering your question, I would really have to check our media director to find out whether we have used network TV on any of our other accounts in the past.

Is that the first part of your question?

Eric Bellingall—Cross

Q. Yes, sir. A. The other is that I am not here as an expert on media. I am here reflecting the views of the media department that we have with some 20-odd people in it who study these questions and make recommendations to me as to which they think more suitable for the product.

Q. Well, you are not here as an expert in advertising, then, you are just here to talk about what you know about

(Tr. p. 5318)

Clorox and not advertising in general; is that right? A. I was referring to the reasons that I have for preferring spot TV versus network TV and the expert knowledge that is made available to me in that category.

Hearing Examiner Haycraft: I might say, Mr. Tincher, for your benefit, that in making the statement I did a while ago about official notice, that I am calling upon, drawing upon experience that I have had in other cases where this matter of television and radio time, all that, has been gone into quite thoroughly. And that it isn't just a case of snap judgment on that.

Mr. Tincher: I would certainly appreciate that, yes, sir.

Hearing Examiner Haycraft: And you are getting into a field now, which is almost on the same basis, what the witness has said is quite—I have heard the story, many, many times over before and while I am not saying, you will not have an opportunity to disprove it, I would say that was quite universally accepted in the advertising field as the phenomena that exists where you have national advertising in an attempt by manufacturers such as Clorox to meet local situations.

If you go in there with a media that is quite expensive and they have little distribution, it is quite an expensive process, whereas if they have large distribution,

Eric Bellingall—Cross

(Tr. p. 5319)

they don't mind doing it. And for that reason, they take a cheaper method of advertising, such as spot.

* * *

Q. Is a promotional allowance a counter method of promoting? A. In effect, yes, because it is an inducement to the

(Tr. p. 5320)

grocery to give you an in-store promotion to push your product more to the consumer in the way of mass displays and to tie in with display materials that you furnish him in an effort to improve your situation.

Q. And that is so much a case as a promotional allowance? A. That is correct.

* * *

(Tr. p. 5332)

Mr. Tincher: All right, sir. At this time, in view of this witness' testimony, which you finally allowed in, that testimony being that these things were planned in 1955 that were not used until 1958, because the competitive situation did not require them. We demand and ask that the Examiner require the witness to produce all correspondence, memoranda, and accompanying or enclosed documents or objects between this witness and the Clorox Chemical Company and/or Mr. Trimpe from June 1955 to August 1, 1957, concerning promotions or potential promotions other than the national housecleaning promotions. And we make the same request for the same documents and the same type of information for the testimony that there was no competitive reason for using such promotions from June 1955 to August 1, 1957.

Eric Bellingall—Cross

Hearing Examiner Haycraft: Well, I will not make that demand. However, I shall be glad to sign a subpoena for you to get it as part of your rebuttal.

* * * * *

(Tr. p. 5333)

* * * * *

Mr. Tincher: I myself apprise you of my position, sir. My point is the burden of proof is on the respondent of this case to come in and prove this contention—

Hearing Examiner Haycraft: All right. They have done it by this witness.

Mr. Tincher: If all they have done is this oral business, I don't think that sustains that burden of proof, and I don't think I have to go behind it.

Hearing Examiner Haycraft: I think he has sustained it amply. You don't have to prove these things by writing; here is a man that is a party to it.

You meet a man on the street and you say to him, "I will meet you at the airport, and we are going to enter into an agreement." And you go somewhere. You don't have

(Tr. p. 5334)

to have a written document to prove that you made that agreement or that you made that appointment. The chances are that many agreements, gentlemen's agreements or what have you, are made without a scratch of the pen.

You don't have to have that, so that a man who is a party to an agreement or a party to a negotiation or party to a transaction certainly can testify unless, by cross-examination, it develops that the entire transaction was a matter of writing, was finally computed, recorded, and

Eric Bellingall—Cross

what have you. Then of course, the document of writing becomes the best evidence of what happened.

But certainly up to this point, up to the present time, the witness' testimony is satisfactory.

Mr. Tincher: Is what?

Hearing Examiner Haycraft: Satisfactory, and competent.

* * * * *

(Tr. p. 5338)

* * * * *

Q. Now, sir, from the time you and Mr. Trimpe originally discussed these counter-promotions up until the time of the acquisition, did you ever discuss this with any other official of the Clorox Chemical Company?

* * * * *

(Tr. p. 5339)

The Witness:

* * * * *

The point I was trying to make was that I don't have any letter from anybody telling me to go ahead and run an ad or place a TV spot now. We discussed these things, coming to agreement, the agency and the client working together over a period of thirty years. We have a meeting, a conference, come to an agreement of minds, and we would come out and put the thing into effect.

We never try to come back with a piece of paper in our hand saying we can buy three spots here or move an ad from

(Tr. p. 5340)

this paper to that paper. That type of formalized approval isn't standard or sought. We would have fifty such occurrences a day.

Our media department, for instance, is empowered to go ahead and shift and alter spots at its discretion. It

Eric Bellingall—Recross

works under a general policy. If we would like to have more minutes than 20s, then they just go ahead and do that all the time. We will even change from one station, from one spot program to another without notifying the client until it has been done.

* * * * *

Q. Now, when you institute a complete new program, not a spot or a change from twenty seconds to a minute, but a complete new program of types of activities which are not being used, that it is not necessary to reduce that to writing and get approval, especially by the executive committee and the

(Tr. p. 5341)

officers of the corporation? A. That is absolutely true, Mr. Tincher. For instance, when we instituted the national promotions in the spring of 1956, we had no such document that in effect said that you may now go ahead and put in effect a national promotion. This had been discussed, been agreed upon, and we went ahead and did it. I don't have a letter that says I can go ahead and stage the fall housecleaning promotion of 1956, the spring housecleaning promotion of 1957, or, to my recollection, any promotions since then.

* * * * *

(Tr. p. 5375)

* * * * *

RECROSS EXAMINATION

By Mr. Tincher:

* * * * *

Q. But still, on this Respondent's Exhibit 83, you can't tell us about the four hundred thousand, where it would be?

* * * * *

Eric Bellingall—Recross

(Tr. p. 5376)

* * * * *

A. What you are looking at is actual expenditure figures, and the four hundred thousand was simply the difference between the 3.8 that I knew about for media expenditure and the 4.2, that million, which would embrace the total. And out of this difference of four hundred thousand had to come out the sales promotion plus additional costs, on the cooking school stuff and things of that kind, administrative and so on. But the precise expenditure for sales promotion and the expenditures that we wouldn't know about, that Clorox makes, are all given there. My figure was just an estimate that would cover that blanket amount for these types prior to the actual costs and the actual costs are reflected in a document of this kind.

* * * * *

(Tr. p. 5377)

* * * * *

Q. Well, that is all I am asking you, sir, where is that shown?

* * * * *

The Witness: They have it broken down here under four categories; that is, promotional materials. There are food shows and cooking schools. They would be costs that we wouldn't keep. Cooperative advertising is something that is a Clorox Company cost and bookkeeping procedure we wouldn't know about, and their six-cents allowance plan. The types of promotions that we would activate in the field, these counter-promotions and so forth—probably Bill Tower should be saying this rather than myself—would be the ones indicated in this category of promotional materials.

* * * * *

Eric Bellingall—Recross

(Tr. p. 5398)

* * * * *

Mr. Tincher:

* * * * *

(Tr. p. 5399)

* * * * *

Then I have, of course, the main motion which encompasses this exhibit within it, also, and that is to strike all the evidence and exhibits, the oral testimony of this witness, concerning his meetings with Mr. Trimpe in 1955 and what was resolved at that time and what was carried on thereafter up until the time of the acquisition with reference to types of promotions other than national promotions and also all testimony in connection with the competitive effects during the period from 1955 to August 1, 1957, as to why these particular promotions other than national promotions were not put into effect.

Hearing Examiner Haycraft: Well, your motion is granted with the further understanding that any of that testimony that relates to the situation after the acquisition as reflecting agreements or understandings or programs that had been adopted or discussed before the acquisition, to make sure we tie those two together.

* * * * *

(Tr. p. 5415)

* * * * *

Mr. Royall: Your Honor, I want to say just one thing. His argument is on plausibility and credibility. I am willing to risk that on Mr. Bellingall's testimony. He has not offered a single argument that this is not relevant or true.

Hearing Examiner Haycraft: I think he has, I disagree with you there, and I think I have indicated my reasoning

Eric Bellingall—Recross

enough that all I will need to do will be to rule, and that is to reiterate that the testimony which

(Tr. p. 5416)

was taken yesterday and today, and the exhibit which has been received in evidence, Respondent's Exhibit 111-A through F will be stricken. Included in that, of course, will be all testimony which relates to a condition or situation which did not transpire and your bottle goods that you are talking about, your larger bottles will be included in that, your three-quart bottle. As I indicated in the very beginning, when the offer of proof was made, I will allow testimony as to what they actually did, before and after the acquisition.

That was the basis of the offer of the proof and that will be the basis of my ruling, and I will suggest that you submit to me the pages and lines that will carry out that and I will then rule definitely as to the pages and lines.

* * * * *

(Tr. p. 5427)

* * * * *

Mr. Royall:

* * * * *

At the last hearing we offered to furnish information related to certain matters as to which Mr. Trimpe testified and we have secured this information and I now offer the following: At the request of Mr. Tincer Mr. Trimpe—and I believe of your Honor—Mr. Trimpe offered to furnish the addresses of the bleach manufacturers whose names appear on RX-67-A to Q and that request, as I understand it, was made on transcript 4233-7, 4264 and 4964.

We have prepared a list showing those manufacturers; in determining the addresses of some of the manufacturers

Eric Bellingall—Recross

we found, for example, in one instance there was a duplication. That was a duplication of the Austin Company in Mars, Pennsylvania about which Mr. Tincher inquired at 4969.

(Tr. p. 5428)

In determining the addresses of the manufacturers it was discovered that some were subsidiaries of other companies which were otherwise listed and in four or five instances the companies were no longer in existence.

After making these adjustments and on the basis of information available the list indicates that at least 229 manufacturers are presently manufacturing household liquid bleach.

* * * * *

(Tr. p. 5429)

* * * * *

Hearing Examiner Haycraft: Let's give it a new number and say it is a revision of 67-A to Q. That would be better because there may be some testimony in there on the other one.

112 is the next number.

(The document referred to was marked Respondent's Exhibit 112-A through U for identification.)

Mr. Royall: And that is to be in place of—

Mr. Tincher: Revision of—

Mr. Royall: Revision of RX-67-A to Q.

(Tr. p. 5430)

Hearing Examiner Haycraft: That is received in evidence.

Proceedings

(The document heretofore marked Respondent's Exhibit 112-A through U for identification was received in evidence.)

* * * * *

(Tr. p. 5438)

* * * * *

Hearing Examiner Haycraft: All right.

(The document heretofore marked Respondent's Exhibit 94 for identification was received in evidence.)

* * * * *

(Tr. p. 5439)

* * * * *

Room 332
Federal Trade Commission
Washington, D. C.

Thursday, 8 January 1959

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 5440)

PROCEEDINGS

* * * * *

(Tr. p. 5446)

* * * * *

Harry Nickelson

was recalled as a witness on behalf of the Respondent and, previously having been duly sworn, was further examined and testified as follows:

Harry Nickelson—Further Direct

FURTHER DIRECT EXAMINATION

By Mr. Royall:

* * * * *

(Tr. p. 5447)

* * * * *

Q. Does that refresh your recollection? A. That is right. This table shows the Clorox sales and share computed on a 32-ounce equivalent basis for the same period as is expressed in the bottom line of the table shown in RX-94.

Q. What is that—what period is that? A. That is from August 1, 1957 through July 31, 1958.

Q. Now, what is the percentage?

* * * * *

A. The Clorox share on a consumer dollar basis for the year up through July 31, was 48.7 percent on a consumer dollar basis and 45.8 percent on a 32-ounce equivalent basis.

By Mr. Royall:

Q. Now, do you know what the share of Clorox was for the months of October-November 1958? A. Yes, just last week we had a preliminary tabulation which was available to you on Monday of this week, I believe, and that figure shows that Clorox's share for October-November

(Tr. p. 5448)

1958, again based upon our preliminary advance tabulation, was also 45.8, the same as for the year ended July 31, 1958.

* * * * *

(Tr. p. 5450)

* * * * *

Harry Nickelson—Cross

CROSS-EXAMINATION

By Mr. Tincher:

* * * * *

(Tr. p. 5469)

* * * * *

Q. And if you want to see where in the last year listed on Respondent's Exhibit 94 the trend has been you would use these bi-monthly periods and the other bi-monthly periods we already have of record for the earlier months after July-July of '57? A. That's right, but you could not look at the trends for a single year by itself because there are seasonal characteristics of this market not only in terms of the total but also seasonal characteristics of brand share trend.

Q. That's right—

(Tr. p. 5470)

A. Therefore, you must look at a trend not only for one year but also for all years.

Q. And that is why Respondent's Exhibit 94 which you have in your hand shows an entire year without showing the trends within the year, does it not? A. That is right. If there are any seasonal changes that have occurred either in terms of the total market or in terms of brand share this erases those seasonal influences.

* * * * *

(Tr. p. 5480)

* * * * *

Mr. Royall: Now, your Honor, there are some other matters to bring up. I think I may have said this morning, we are going to ask for adjournment at noon until tomorrow, but some of these matters we can get out of the way.

Harry Nickelson—Cross

Your Honor, Mr. Trimpe testified at the November hearing that Clorox had introduced a new quart bottle in Buffalo and Atlanta and that the company had increased the price of Clorox to those two dealers.

He further testified that Clorox was unable to sustain its sales in those markets with the increased price and was subsequently forced to discontinue the sale of new bottles and reduced its price in these two markets.

We were requested to produce figures as to the loss of sales in these markets and that appears at Page 4912 and 4913 of the transcript.

I now state that the sales figures show that in Atlanta the bottle was introduced January 15, 1958. In February the quart share of Clorox total volume was down 2.8 percent, compared with the previous year; March, 1.4;

(Tr. p. 5481)

April, 3.8; and May, 6.3; all down. We have IBM sheets to support that data.

In Buffalo, the quart bottle was introduced in January of 1958. The quart share of Clorox volume in February, as compared to the previous year, was plus $2/10$ of one percent; in March, down $3/10$; in April, down $1/10$; in May, down $2-2/10$; June, $1-7/10$; and July, $2-7/10$.

I think the sale of the quart bottle, it appears, was discontinued in Atlanta on June 30, 1958, and in Buffalo on September 4, 1958.

* * * * *

Mr. Royall:

* * * * *

Now, your Honor, we are having some difficulty in determining what is necessary to close our case because of the lack of time up to this time for anybody to

Harry Nickelson—Cross

identify exactly the questions and answers which your Honor struck or the answers which your Honor struck.

(Tr. p. 5482)

Now, I ask you that, Your Honor, because off the record and afterwards we had some private conversation about it, with all the counsel present. What I would specifically like to know is whether this evidence was stricken because it was not credible, believed, or whether it was stricken because your Honor considered it irrelevant.

Hearing Examiner Haycraft: It is the latter.

Mr. Royall: Just the latter.

(Tr. p. 5488)

Mr. Royall: Your Honor, at the hearing in Los Angeles, there was offered and received over our objection annual reports of the Purex Corporation. I don't know exactly what years, but up to 1957. We now desire to offer into evidence, that is the fiscal year '57. We now desire to offer in evidence the annual report of Purex for the fiscal year ending June 30, 1958, and it is in the form of an attested copy from the Securities and Exchange Commission.

(Tr. p. 5489)

Hearing Examiner Haycraft: It will be marked Respondent's Exhibit 114.

(Tr. p. 5496)

Harry Nickelson—Cross

Mr. Royall:

* * * *

Your Honor, another subject, and the final one on Mr. Stoneman; I am pretty sure there are some documents that we will want produced if he is going to be put on the stand.

Hearing Examiner Haycraft: Why don't you give a memorandum of those documents?

* * * *

(Tr. p. 5497)

* * * *

Hearing Examiner Haycraft: (Interposing) If they tell you what it is they would like to have produced this far in advance, you can write to Mr. Stoneman and ask him to bring those documents here, and we will settle the question whether they are entitled to be put in evidence at the time he gets here. Just a matter of asking him, similar to a request for the production ahead of time. I think it is

(Tr. p. 5498)

just a matter of trying to expedite the proceedings and I shall ask him, I will certainly do that; I will ask that you pass on to Mr. Stoneman any requests that Mr. Royall makes, and you can tell him that I suggested that he bring those with him, whether he thinks they are relevant or material or should be produced, we will settle.

* * * *

(Tr. p. 5502)

* * * *

Room 332
Federal Trade Commission
Washington, D. C.

Friday, 9 January 1959

Met, pursuant to adjournment, at 10:00 a.m.

Howard J. Morgens—Direct

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 5503)

PROCEEDINGS

* * * * *

Howard J. Morgens

was called as a witness for the Respondent and, having been previously duly sworn, testified as follows:

DIRECT EXAMINATION

* * * * *

By Mr. Royall:

Q. Mr. Morgens, it has been asserted in this case that Procter and Gamble has the legal power, or had the power I believe they said, to determine the policies and practices of the Clorox Company. That is right, is it not?

A. Of course it is, sure.

Q. Is there a distinction—let's put it this way: Do you distinguish between legal power to determine matters relating to the company and power in the marketplace?

Mr. Tincher: Wait. We object, sir, on the grounds of no possible relevancy. Whatever was determined today

(Tr. p. 5504)

4

could be changed tomorrow.

Hearing Examiner Haycraft: Well, I think that this is probably a basis for defense, part of the defense, even though there might be a legal power to do something that economic conditions might be such that it would be suicide to do it, economic business suicide.

Howard J. Morgens—Direct

The objection is overruled. I will let him testify to that.

* * * * *

(Tr. p. 5508)

Hearing Examiner Haycraft: I am going to pursue the same policy on this. I will let him answer and let you cross-examine him, and then we will take a motion to strike, because I don't think it is relevant and competent.

* * * * *

By Mr. Royall:

Q. Now, Mr. Morgens, as a practical matter and based upon your experience, what type of power—describe the power that an owning company might exercise as to a subsidiary company?

* * * * *

A. The power that Procter and Gamble, or any business that I know of, can exercise is the result of really three main

(Tr. p. 5509)

factors: First of all it is money; secondly, it is brains—

Hearing Examiner Haycraft: Management.

A. (Continuing) —and thirdly, it is the restraints imposed on the use of money and brains by good business judgment and common sense.

Now, that is a mouthful and maybe I should go to—
By Mr. Royall:

Q. Let me ask you this: Is that statement of yours based entirely upon your practical knowledge? A. It is. I am no economist. I don't pretend to be.

Q. Yes. Now I will go ahead, sir. You have described two elements, have you? A. Well—

Q. Three elements. A. Three elements. By money I mean, of course, cash and securities that can be readily

Howard J. Morgens—Direct

converted into cash. That is an element in power along with these other factors.

Q. Let's take that one up. What is the situation, the factual situation as to money in the case of the Clorox Company?

* * * * *

(Tr. p. 5510)

A. Well, the facts on money in relation to the old Clorox Company are something I feel qualified to comment on. At the time we bought the old Clorox Company it had far more cash in relation to its sales volume than Procter and Gamble had. By that I mean it had more cash, more excess cash over and above its normal operating requirements. We think, in those terms——

Hearing Examiner Haycraft: What was the ratio?

The Witness: It had more cash in relation to the business that it had to support, in other words.

Hearing Examiner Haycraft: I said, what was the ratio?

The Witness: The old Clorox Company had excess cash of four million dollars when we acquired them, to support a business of forty million, approximately.

Hearing Examiner Haycraft: Forty million dollars annually?

The Witness: Forty million dollars annually.

Now, Procter and Gamble——

Hearing Examiner Haycraft: Ten to one then?

The Witness: Ten to one.

Procter and Gamble at that time had an annual business of a billion two hundred million. It is a little more than that now. I think that is the approximate figure at the time we acquired it. To have anything like comparable cash in relation to its needs, Procter and Gamble would have needed

Howard J. Morgens—Direct

(Tr. p. 5511)

one hundred and twenty million dollars in excess cash over and above its operating requirements.

It had nowhere near that amount of money. In fact, just shortly before we acquired it we were forced to go out and borrow some one hundred million dollars and we had already some additional loans, that was on top of some short-term loans that we had.

The point is that in relation to the needs of the business, the Clorox Company was much better fixed than was Procter and Gamble. But, quite apart from the arithmetic, the Clorox Company had all the cash that it could possibly use within any kind of reasonable interpretation to do almost anything that it wanted to do.

* * * * *

(Tr. p. 5512)

* * * * *

Q. How about the brains or management situation?

A. Well, I use the word "brains" or "management"; by that I mean all types of business competence or all types of competence in business.

Q. What is the practical situation as to that in relation to the Clorox Company?

Hearing Examiner Haycraft: You understand the witness has to have a certain amount of modesty on that, management and ability of the present Procter and Gamble Company.

The Witness: I think I can make this statement fairly factual with due regard for being modest.

I don't think there is any evidence in the facts, I am not talking about evidence in a case.

Mr. Royall: Don't do that. Start over again on that.

Howard J. Morgens—Direct

(Tr. p. 5513)

The Witness: All right.

By Mr. Royall:

Q. Do you know of any facts? A. Well, what I was going to say as a conclusion was this, then I will support it.

There is no way that I can see that anyone can conclude that Procter and Gamble could have done better with the Clorox brand than the old Clorox management did.

Q. Now, what are the facts on that? A. Well, you can look at it any way you wish. You can look at its growth record, you can look at its return on capital invested, you can look at its percentage of profit on dollar sales, you can look on the position it achieved in the bleach market, you can look at it from any angle you wish and you must conclude that that was a remarkably successful business and you don't get that kind of success without very competent management.

I would like to think, and here's where the modesty might come in, for example, I would like to think we could have done as well, I am not at all sure we could have or would have, but certainly I don't think that there is anything in either our figures or their figures which would indicate we could do anything better.

Q. Now, Mr. Morgens, in the question of power—

A. I had a third factor there.

(Tr. p. 5514)

Q. Excuse me; complete your statement. I am sorry.

A. My third factor was, maybe a little more difficult to describe. It refers to the restraints on the use of money and brains which are imposed by good business practices

Howard J. Morgens—Direct

and judgment and common sense. Those restraints are very real. For example, an insane man in one sense has a lot more power than a well-balanced one or a man of good judgment. An insane man is more to be feared, his power is more to be feared than that of a normal person.

Similarly, an irresponsible and arbitrary management in the hands of a closely held company could starve one part of its business in order to gorge another part, and that would be a form of business insanity, and I don't think that kind of insanity can be assumed; certainly I don't think it can be assumed for Procter and Gamble. The restraints on us are no less real than the restraints that were on the old Clorox Company.

Q. Now, Mr. Morgens, your statements as to the conditions which you have described in your last several questions, that is, conditions as to Clorox Company and as to Procter and Gamble, based upon your observation of facts or not, actual existing facts? A. Would you repeat your question, please?

Q. Are your statements as to what you could do from a managements' standpoint and from a dollar standpoint, are they based upon your actual knowledge and observation of the

(Tr. p. 5515)

Clorox Company and the other Procter and Gamble operations? A. Based on my knowledge of the facts and my judgment, both.

Q. And your judgment, applied to those facts? A. Applied to those facts.

Q. Mr. Morgens, as a factual and practical matter and not from a theoretical standpoint or from a strictly legal standpoint, does Procter and Gamble have any more power within the liquid bleach industry than Clorox Company

Howard J. Morgens—Direct

or its predecessor have? A. I don't think so, and for the reasons which I have just explained.

Q. Now, assume what you say is not a fact and—strike that out.

Even if you did have greater power and were willing to use it, would it be from a business standpoint advisable for Procter and Gamble to do so? A. I don't think as a practical matter, I think I have testified on this before, that Procter and Gamble any more than the old Clorox Company could increase over any period of time Clorox share of market almost no matter what it did within any kind of reasonable limitations.

I think in previous testimony I have gone in considerable degree the reasons for that. Certainly if we were able to do it I think the cost of so doing would be much greater than any additional profit and any additional volume that might

(Tr. p. 5516)

secured.

Q. Is that statement of yours based on facts and your business judgment which in turn is based on your experience in this field? A. I think I can say, Yes, to that.

Q. Now, Mr. Morgens, you testified about a year ago, on page 888 of the record, in substance, that you believe that Clorox distributor set up to be an excellent method of distribution and that, in your opinion, that it had been successful.

Have you since that time had an opportunity to observe this Clorox distributor system and have you kept up with it, in other words, since your prior testimony? A. Yes, I have.

Q. State whether or not anything has occurred in the past year which would change the observation you made in the testimony before? A. There has been nothing; I

Howard J. Morgens—Direct

don't recall my exact testimony on that exact page, but what I said at that time I believe more than ever sold as a company on the Clorox distributing organization than we have ever been.

Q. Why are you so more than ever? A. Because it is effective.

Q. Why? A. Because it is effective.

(Tr. p. 5517)

Q. You testified also about a year ago, on transcript 626, that the Clorox distributing system was operated separately from the Procter sales organization. Is it still so operated? A. Yes, it is; completely separate.

Q. Based upon your knowledge of the distributor system and your prior and existing knowledge as to Procter and Gamble, do you have any plans now to change this distributor system of Clorox?

* * * * *

The Witness: We have no such plans.

By Mr. Royall:

Q. Do you know of any reason for foreseeable reason why

(Tr. p. 5518)

would change that system? A. No, it is working well, it is economical, we don't believe in tearing down something that is functioning well. We don't advance in business by tearing down, we advance by building on what's good.

Q. Now, Mr. Morgens, about a year ago, at transcript 828, you testified in substance that Clorox was not spending any more per case on advertising and promoting Clorox than did the old Clorox Company. After this lapse of time do you at the present time know of any reason

Howard J. Morgens—Direct

why this expenditure per case should be increased? A. No, I don't.

Q. Has it been increased? A. It has not.

Q. Can you give us the reasons why you do not now see any basis for increasing it, factual reasons? A. I don't know whether you would call this factual or not but it is sound policy to continue something which is working well. This case-rate is working well in relation to Clorox.

Q. Is that based upon your observation, factual observation, and upon your business judgment? A. Yes, it is.

Q. Now, do you now, at this time, know of any reason why that expenditure rate should be changed, rate per case.

(Tr. p. 5519)

should be changed for the future? A. No, and I know a lot of reasons why it shouldn't be changed.

Q. What are some of those? If there is anything in addition to what you have said? A. It gets into a philosophy of how you manage advertising budgets.

Q. I am speaking now of the distributor system. A. No, the advertising—

Q. I am sorry; the budget, yes. Go ahead, sir. A. When you find either by historical record or by experimental endeavor that you must do on a new brand what the right expenditure per case is you stick with it, we stick with it, as a matter of sound policy. One can always get arguments that it should be bigger, the enthusiasm of a person thinks it should be bigger, but you stick with that per-case rate when it is working well and you are very happy to stick with it because it takes out of the whole area of decision the guess work and the judgment and enthusiasms that come from advertising agency people occasionally.

Howard J. Morgens—Direct

Q. Now, is that statement of yours based on your practical observation of this per-case rate and upon your business judgment which is in turn based on your experience?

A. It is.

Q. Mr. Morgens, since the acquisition have you or anyone

(Tr. p. 5520)

else for Procter and Gamble at any time changed or sought to change the advertising and promotional policies of the Clorox Company?

I would like a yes or no answer on that, sir. A. No.

Q. Have you ever changed or sought to change the advertising policy followed by the Clorox Chemical Company? A. No.

Q. Why have you not sought to make any change in the advertising and promotional policies? A. Because, in our judgment, those policies were working well.

Q. Did your decision or your opinion or view not to change have any relation with this litigation? The pendency of this litigation? A. No. It is a very important point to Procter and Gamble to keep the operating people free from bother or concern with the litigation that we are in and we carry out that policy to the maximum extent of our ability. We try to separate the two. Operating people can not operate well, and in a highly competitive business they must operate well, and they can't operate well if they are constantly worried about a lawsuit.

Q. What I really intended to do, Mr. Morgens, was to ask you a question which has been asked of other witnesses,

(Tr. p. 5521)

possibly of you, I want to ask it as of the present time: Did the pendency of this litigation have any effect upon

Howard J. Morgens—Direct

your opinion as to whether or not the advertising and promotional policy of Clorox should be changed? A. It did not.

(Tr. p. 5522)

Q. Now, Mr. Morgens, about a year ago, at transcript 658 you testified that any product with a market share as high as Clorox was vulnerable to competition and you said that your major hope was that you would be able to hold somewhere near the share of the market held by Clorox.

Now, since that time, since the time you testified, have you had further opportunity to observe the operations of Clorox? A. Yes, I have, obviously.

Q. What is your present opinion as to Clorox substantially increasing its present share of the market? A. My opinion is still the same as it was.

Q. Do you want to express that opinion as of now? A. Well, I think Clorox or any product with that high a share of market is vulnerable. All of Procter & Gamble's history proves that point. I think I have testified in more detail in the past.

Q. Yes, you have. A. I can go over it again if you wish.

Q. No, sir, we do not. Your opinion is now the same? A. Absolutely.

Q. Now, is that based upon your knowledge of the practical facts of operation and upon your best business judgment? A. It is.

Q. I would ask you, Mr. Morgens, if, based upon your

(Tr. p. 5523)

practical experience with the Clorox Company since Procter & Gamble acquired it, and based upon your business judgment, has the acquisition of Clorox improved the competitive position of Clorox in the liquid bleach indus-

Howard J. Morgens—Direct

try, and if you want to comment or give your opinion as to various aspects of it please do so. A. In my judgment, my considered judgment, the position of Clorox in the bleach industry has not been changed in any way by its acquisition by Procter & Gamble. I can think of no way that it has been changed, not as to shelf space, I have testified on that; not as to store distribution; not as to in-store displays; not as to manufacturing; not as to advertising; not as to promotional abilities; not as to anything as I have been able to evaluate it.

Q. Is that opinion of yours, Mr. Morgens, based upon your practical knowledge and observation of the operation of Clorox after the acquisition and upon your business judgment based on experience? A. It certainly is.

Q. In your opinion, based upon such observation and business judgment is it your present opinion, present view or opinion, that Clorox will improve its competitive position in the liquid bleach industry by reason of the acquisition by Procter & Gamble? A. The only change in your last two questions is a "will"

(Tr. p. 5524)

for a "have."

Q. Has it now and is it your present opinion whether it will? A. For the same reasons I don't think it will. It has not for those reasons I gave. It will not for the same reasons in my judgment.

Q. Now, based on the same factual knowledge and information and on your business judgment, to what extent has the acquisition of Clorox by P&G affected the competitive positions in the bleach industry? A. It follows, I believe, that if the acquisition of Clorox by Procter & Gamble has not affected the competitive position of Clorox within the bleach industry, that hasn't affected the competitive conditions in that industry.

Howard J. Morgens—Direct

Q. And based on the same factual knowledge and observation and upon your business judgment is it your present opinion that it will affect it? The acquisition will affect the—— A. No, it is not.

Q. Mr. Morgens, on the general question of power in the business sense do you know of any way which you have not been asked about in which any such power in the business sense could be applied in the operation of the Clorox Company to the detriment of other bleach manufacturers?

A. The only way I can answer that question is that we have no more power, and this is a repetition, we have no more

(Tr. p. 5525)

power within the bleach industry for the reasons I mentioned than the old Clorox Chemical Company had.

Q. Is that opinion based upon your factual observation and knowledge of the Clorox operation up to this time and upon your considered judgment? A. It is.

* * * * *

(Tr. p. 5526)

* * * * *

Hearing Examiner Haycraft: Do you wish to make a motion at this time to strike that testimony from the record?

Mr. Tincher: Yes, sir, I certainly do.

Hearing Examiner Haycraft: The motion is granted.

Mr. Royall: Does that apply to all of it?

Hearing Examiner Haycraft: All that he has given this morning.

Mr. Royall: Yes, sir.

All right, come down, Mr. Morgens.

* * * * *

William G. Werner—Direct

(Tr. p. 5527)

* * * * *

William G. Werner

was recalled as a witness for the Respondent and, having been previously duly sworn, was further examined and testified as follows:

FURTHER DIRECT EXAMINATION

* * * * *

By Mr. Pride:

Q. Mr. Werner, I show you a document which has been marked Commission's Exhibit 27 and ask you if you recognize that document (handing document to the witness)?

A. Yes, I do.

Q. Did you personally deliver that document to the Federal Trade Commission? **A.** I delivered it on June 17, 1957, at a conference with Mr. Sherman Hill, Messers. Hall, Briggs, and Smith, in the offices of the Federal Trade Commission.

Q. In Washington?

(Tr. p. 5528)

A. Yes, in Washington.

* * * * *

(Tr. p. 5529)

* * * * *

Bernard Franklin Trimpe

was called as a witness and, previously having been duly sworn, was examined and testified as follows:

Mr. Royall:

* * * * *

Your Honor, I am not going to argue about the ruling you have made but I want to make an inquiry

Proceedings

only. I think your ruling was wrong, but we have done a lot of talking about it, but here is the thing I want to know, of course it may relate to some other testimony. We may do that and there is another consideration after Mr. Trimpe's testimony we might want to recall Mr. Morgens for a question or two because we haven't had time to go fully over it with him, we just got the first question.

What I wanted to ask you is this, there was some testimony there of Mr. Morgens that there had been no change

(Tr. p. 5530).

after the acquisition in the promotion methods and policies.

Hearing Examiner Haycraft: That is not relevant or material in this sense, that whether there has been or not would not have any bearing on the power to do it, admittedly they could have changed if they had wanted to.

Mr. Royall: You mean legally.

Hearing Examiner Haycraft: It is within the power of Procter & Gamble to fire the whole Clorox staff tomorrow and put their own men in there. It is within their power to discontinue their distribution through the methods they are using now, the brokers and make it a part of Procter & Gamble. The fact that they haven't done it is neither here nor there.

Mr. Royall: I don't want to get into anything——

Hearing Examiner Haycraft: That is from your standpoint.

Mr. Royall: The legal power.

Hearing Examiner Haycraft: That is what I am talking about and that is what we have to decide this case on.

Mr. Royall: Of course, I don't want to argue, but I don't think so, I think power within the reasonable business judgment is the test.

Bernard Franklin Trimpe—Direct

Hearing Examiner Haycraft: That, of course, you will have to decide in court, it never has been, but maybe you can establish it.

(Tr. p. 5531).

Mr. Royall: Yes, sir. In other words, any corporation has the power to do anything with its business.

Hearing Examiner Haycraft: Within its charter.

Mr. Royall: Within its charter which is pretty broad in all of them, therefore—

Hearing Examiner Haycraft: About the only defense on that point, it seems to me, would be that it was without the power to ultra vires and then you could amend the charter if you wanted to.

Mr. Royall: I wasn't thinking of getting into the legal part of it.

Hearing Examiner Haycraft: That is the reason I am letting you put all of this in so you can argue that before the Commission.

Mr. Royall: I realize that, your Honor. One other thing I wanted to clear up, I don't want it to appear and I don't think it does appear, but I want to be sure it doesn't: I don't want it to appear that these gentlemen didn't have an opportunity to cross-examine.

Hearing Examiner Haycraft: Well, they did have, sure.

* * * * *

(Tr. p. 5534)

* * * * *

DIRECT EXAMINATION

By Mr. Royall:

Q. Mr. Trimpe, I believe the record shows, anyway I will ask you, is it not a fact that you were with the Clorox Chemical Company from 1955 until the acquisition and

Bernard Franklin Trimpe—Direct

remained with the Clorox Company from August 1, 1957, the date of the

(Tr. p. 5535)

acquisition, until the present time? A. That is correct.

Q. During that period have you had an opportunity to observe the marketing activity particularly of the Clorox Chemical and of the Clorox Company?

* * * * *

(Tr. p. 5536)

* * * * *

Mr. Royall: Read the question. I don't know whether he has answered it or not.

Hearing Examiner Haycraft: He did answer it, yes.

Mr. Royall: All right.

By Mr. Royall:

Q. Now, based upon the facts you know and upon your experience in marketing and your best business judgment, what effect has the acquisition had on the marketing of the product Clorox?

Mr. Tincher: We object to that, sir.

Mr. Royall: That is a series, your Honor—

Hearing Examiner Haycraft: That comes within my ruling.

(Tr. p. 5537)

Mr. Royall: That comes within your ruling; yes, sir. I said the first ones were.

Do you want me to tender it, your Honor?

Hearing Examiner Haycraft: No, you go ahead and answer it and you move to strike. A. None.

By Mr. Royall:

Q. Based upon the same considerations that I mentioned and your business judgment what effect has the acquisition

Bernard Franklin Trimpe—Direct

had on the competitive situation of Clorox in the bleach industry? A. None.

Hearing Examiner Haycraft: Stricken.

I understood you have an objection to anything of that kind.

Mr. Tincher: Yes, sir, I was going to wait until he gets through with the whole series.

By Mr. Royall:

Q. Based on the same knowledge and judgment and experience, what effect will the acquisition, in your opinion, have on the marketing of Clorox? A. None.

Hearing Examiner Haycraft: Stricken.

By Mr. Royall:

Q. On the same basis, in your opinion what effect will the acquisition have on the competitive situation of Clorox in

(Tr. p. 5538)

the bleach industry? A. None.

Hearing Examiner Haycraft: Stricken.

Mr. Royall: Read that question over, please.

(Question read.)

By Mr. Royall:

Q. Based upon the same knowledge and your business judgment and experience, what effect will the acquisition have on the competitive situation in the liquid bleach industry? A. None.

Hearing Examiner Haycraft: Stricken.

* * * *

By Mr. Royall:

Q. The stimony, Mr. Trimpe has shown that Clorox used the 2, 4, 6, price off label and the 3, 5, 7, price off label,

Bernard Franklin Trimpe—Direct

the coupon packs, and newspaper and merchandising packs, all of these after the acquisition.

Why were these promotions used?

* * * * *

(Tr. p. 5539)

* * * * *

A. In every instance we used those special packs to counter the introduction of a new Purex bottle.

* * * * *

(Tr. p. 5540)

* * * * *

Q. In the Clorox Company since the acquisition what part do you have and what part does Mr. Bellingall have in the determination of the promotions to be used? A. I am an officer of the company.

Q. Yes, sir. A. And as vice president of the company I have responsibility for the sales.

Q. Yes, sir. A. And I am in a position to state what I think should be done in regard to a particular competitive situation. And the only thing I do with Mr. Bellingall is when I make up my mind what I think we should do, through our advertising manager, Mr. Shaffer, get with Mr. Bellingall and get his

(Tr. p. 5541)

recommendations from the agency as to what they think is the best means to meet the situation, but it is based on my telling them that we must do something in a particular area, that I want to do something in a particular area.

Q. What is that? A. That I want to do something in a particular area.

Q. Now, was that the method in which these promotions which I mentioned, the 2, 4, 6, price off label, the 3, 5, 7,

Bernard Franklin Trimpe—Direct

price off label, the coupon packs, the newspaper coupons and the merchandise packs, were handled? A. Exactly.

Q. And did the personnel that you mentioned determine the matter? A. I determined that we had a problem and they working with me came up with what they thought was several solutions and I chose one and then they executed it in the sense of putting—

Hearing Examiner Haycraft: By "they" you mean the advertising people?

The Witness: The advertising people, Mr. Bellingall mainly; he is the man I work with.

* * * * *

(Tr. p. 5544)

* * * * *

By Mr. Royall:

Q. State whether or not in these promotions you have described were used in every instance where Purex introduced its new bottle and if there was a difference, why the difference?

* * * * *

A. As I have indicated, we tried to use the best judgment that we had to meet the situation and that was a variable situation, so that in some instances we used a cents off label and in another one we used a merchandising pack. In some instances we decided we would increase our advertising support in a particular market. Sometimes we happened to be having a fall or spring promotion going on so we would

(Tr. p. 5545)

interrupt that. In some markets we did nothing, but—

By Mr. Royall:

Q. What did that decision and selection depend on?

Bernard Franklin Trimpe—Direct

A. Well, it depended primarily on my analysis of the individual situation, my business judgment in regard to this competitive activity on the part of Purex with the introduction of this new bottle.

Hearing Examiner Haycraft: Is that the three-quart bottle or the half?

The Witness: No, sir, if I can go off the record—

To answer, your Honor, to say something nice about the Purex Company, they have come out with a very attractive bottle and I consider it a very strong competitive factor.

Hearing Examiner Haycraft: That is the one that has the handle on it?

The Witness: Yes, sir.

Hearing Examiner Haycraft: What size?

The Witness: On the quart and or the half gallon and on the gallon.

Hearing Examiner Haycraft: What exhibit did you call my attention to?

Mr. Tinch: Sir, Commission's Exhibit 455 is the brochure that introduced the bottle, has the complete story on it.

The Witness: I don't know what I said, but we

(Tr. p. 5546)

felt this was one of the strongest competitive things that happened to us.

Hearing Examiner Haycraft: I wanted to clear up in my mind because that was my recollection of the situation but when this was injected about the three-quart bottle recently I got confused.

The Witness: Well, they did introduce a three-quart bottle along with the Roman Cleanser Company prior to this, but we immediately met it and got a bottle of our

Bernard Franklin Trimpe—Direct

own, but in checking the trade and in checking their distribution and the reaction of the buyers we found that this was not going to be accepted.

* * * * *

By Mr. Royall:

Q. Now, Mr. Trimpe, I believe it has been testified that a five cents off label was used by Clorox after the acquisition, that is sometime in 1958, I believe, and where was that used? A. It was used in the area surrounding Chicago, in Wisconsin, Illinois, in seven distributors' territories.

Q. And what was the purpose of that?

(Tr. p. 5547)

A. To counter a series of five cents off label packs of Linco and Roman Cleanser.

Q. Well, why did you not put that into effect before 1958?

* * * * *

A. I don't think it is true I didn't do anything to meet this situation as I understand your question.

* * * * *

Hearing Examiner Haycraft: I told you he had already answered it. It didn't develop until then, that is the

(Tr. p. 5548)

story, to just boil it down to a nutshell, it hadn't gotten to the point where we thought it was necessary.

Mr. Royall: Is that the situation?

The Witness: No, I think I took measures in the earlier part of that development that I thought were the answer but they didn't work out and if there is anything to go on the record is I just didn't move as fast as I should have against that situation. That is all.

Bernard Franklin Trimpe—Direct

By Mr. Royall:

Q. Now, were any of these promotions that I have described this morning suggested by the Procter & Gamble Company? A. Absolutely not.

(Tr. p. 5551)

CROSS-EXAMINATION

(Tr. p. 5552)

By Mr. Tinch:

Q. I will refer you to your testimony at page 4368, line 25 and at 4369, line 1 (handing document to the witness).

A. This had to do with the opening of a new plant in Ohio. The Examiner asked me if we took any overt act when we knew of a competitor operating a new plant. I had referred to the opening of a Fleecy White plant, and I said that we didn't wait until some overt act, that we notified the distributor about it and tried to straighten up the sales force and check up our retail distribution on the sizes.

(Tr. p. 5553)

Is that what you are referring to?

Q. I am referring specifically to your language that you don't change price when a competitor changes price or method of distribution. A. We do not change our base price.

Q. Let me ask you, Mr. Trimpe, when you have a 3, 5, and 7 cents off or any amount of cents off on a label or

Bernard Franklin Trimpe—Cross

when you have a coupon, you have in effect changed your price, have you not?

* * * * *

A. No, our base price is still the same to our distributors. Is that what you mean?

* * * * *

Q. You still charge the distributor the same and the distributor takes the loss— A. No, it is reflected all the way down through the trade.

Q. Yes. A. Yes.

Q. You charge the distributor less? A. Yes, and he in turn charges less and that in turn is reflected at the retail level.

Q. And that means that the retail grocer then sells the Clorox bleach at a lower price than he has been customarily

(Tr. p. 5554)

selling it? A. Well, we try—sometimes it happens, sometimes it doesn't, but we—that is the objective, certainly, of a cents-off label.

Hearing Examiner Haycraft: What he is trying to say, I suppose, is that in effect it is a price cut to the consumer, that is an inducement? A. Yes, to come in and buy more, yes.

Mr. Royall: That is—

The Witness: We have done that on a defensive measure and counter measure.

Hearing Examiner Haycraft: It is a temporary situation, that is the reason you put it on the label?

The Witness: That is right.

* * * * *

(Tr. p. 5555)

* * * * *

Bernard Franklin Trimpe—Cross

By Mr. Tincher:

Q. And that is the situation that would have occurred in Nashville, for example, when the Texas people moved into that market for the first time? A. That is the situation that occurred in Nashville when Purex introduced their new bottle.

* * * * *

Mr. Tincher: At record 4385, your Honor, you

(Tr. p. 5556)

said to make Mr. Trimpe show where he had lost shelf space where a private label had been introduced. We ask that question now, specifically where Clorox has lost shelf space where a private label was introduced? A. Any one of the two markets of Miami and Tampa with the introduction of Winn-Dixie's private label.

Hearing Examiner Haycraft: How many spaces did you lose there?

The Witness: I have both before and after figures on that and also pictures and I went down personally into the market and got to the supervisor of one of the Winn-Dixie operations and went into one of the stores and discussed it with him on the basis of the situation. We had at one time around 40 percent of the shelf space in those stores and when they came out with the private label they immediately split it into 50 percent for their private label, and the other bleaches on the shelf received the balance of the space which cut us down to about 25 percent.

By Mr. Tincher:

Q. When was that, sir? A. They introduced it in the early part of 1958 and I was in there—I will check my itineraries—I think about May.

* * * * *

Bernard Franklin Trimpe—Cross

(Tr. p. 5557)

* * * * *

Q. Were any brands eliminated in that redistribution of shelf space? A. I think in the Miami market Roman Cleanser lost a size but nothing happened in the Tampa market and I am again pulling from my memory of my records, but again I can check that out.

Hearing Examiner Haycraft: You didn't lose any sizes?

The Witness: We didn't lose any sizes.

* * * * *

(Tr. p. 5558)

* * * * *

By Mr. Tincher:

Q. How many stores were involved in this situation, sir?

(Tr. p. 5559)

A. I will check it out again but I think Winn-Dixie have out of Tampa about seventy stores and about eighty out of Miami.

Hearing Examiner Haycraft: Did it have much of an effect on your volume of business?

The Witness: Yes.

Hearing Examiner Haycraft: Would you say that it affected it proportionately the same amount? In other words, I am trying to relate shelf space to the volume.

The Witness: Two things happened. First of all, they came in and cut down on the shelf space. Secondly, they refused to give us any more features. One of the big features in the Miami market happens to be gallons and we have an excessive volume on gallons in that market as compared to any other place in the United States. We have got a lot of wonderful features and I can give you the

Bernard Franklin Trimpe—Cross

exact dates of the features because we have good brokers down there and newspaper tear sheets. What it did was cut out our features. They have been featuring gallons for 29 cents in Miami, Tampa and Jacksonville against our 59 cents for the last five months, and it's just practically killed our gallons.

Hearing Examiner Haycraft: You mean on their private brand?

The Witness: Yes, they have a standard 29-cent price on gallons in that market.

(Tr. p. 5560)

Hearing Examiner Haycraft: And that would cut your volume?

The Witness: That is right.

Hearing Examiner Haycraft: With gallons being such a big volume.

The Witness: And the trouble with it is further that our half gallons are 33 cents so the consumer gets a better buy out of a gallon than she does on any of our sizes. It has hurt our business in Miami, particularly; less in Tampa, and I think we are doing fairly well in Jacksonville, as I remember the figures. But the big area was Miami, which is our big volume area.

* * *

Q. And you haven't used free premiums? A. We have used a self-liquidating premium in connection with our promotion.

Q. National drive? A. Yes.

Q. Specialized or regionalized? A. What is the date of today? I assure your Honor we wouldn't sit—we just couldn't let it happen. We are

Bernard Franklin Trimpe—Cross

(Tr. p. 5561)

going to announce, Mr. Tincher—

* * * * *

Mr. Tincher: Ninth. My question is what have you done?

The Witness: Up to this time I have gone into the market, I have investigated the situation, and I am sure that was in May now. I felt that they couldn't continue the situation—I was wrong. We have continued to lose volume, this can be stipulated if that is the word, by IBM machines.

So, I came back and I said that I wasn't going to stand for it any longer, but I thought that the best thing we could do was to try to get some kind of an idea that they couldn't duplicate quickly, so I recommended a special pack on gallons only, and it has been put together and I think your Honor is right, I better keep still right now because I can't remember what day it is going to be announced, but I assure you it is to try to reestablish our gallon business on the market, Mr. Tincher, and up to that time the only thing we did was to try to hope that willy-nilly, I guess,

(Tr. p. 5562)

that they wouldn't be able to continue this price situation.

By Mr. Tincher:

Q. All right, from May 1958, getting back to my question, to December 31, 1958, you used no coupons in those two cities—

A. You are talking about newspaper coupons or off the bottle?

Q. Either one. A. We have not used them.

Q. Yes, you have not used them.

Bernard Franklin Trimpe—Cross

You used no premiums in addition to the regular premium on the national drive? A. No.

Q. You used no price-off labels? A. That is correct, we have not used any price-off labels.

Q. You didn't increase the per case allowance for advertising and promoting? A. We did not increase the per case allowance for advertising and promoting.

I can say one more thing that I think perhaps you should know about, your Honor; I spoke very highly of the Purex bottle. I assure you that the Clorox Company is not going to sit back and allow that to happen just as we didn't on the three-quarter one, so in the last year we have developed a bottle which we think is superior to theirs and we are

(Tr. p. 5563)

testing it in Florida. I forgot to mention that. We hope that our bottle in Miami, Tampa, Jacksonville, it is on all sizes, not gallons. That is another competitive step that we have taken.

By Mr. Tincher:

Q. You started doing that when, sir? A. I will have to get that, sir.

Q. On all sizes? A. That is right.

Q. And you raised your price ten cents a case? A. We did not raise the price.

Q. You didn't raise the price there? A. We did not raise the price in Florida on any of those sizes. This is a test market.

Q. That is as contrasted to raising the prices in Atlanta and in Buffalo? A. And that is a different style bottle.

* * * * *

Bernard Franklin Trimpe—Cross

(Tr. p. 5568).

* * * * *

By Mr. Tincher:

Q. Now, you testified at record 4882, and I will ask you if you recall the testimony, that a grocery chain in Philadelphia had raised the price of Clorox bleach and that other chains had followed suit.

* * * * *

A. Yes, I testified that in Philadelphia—is it necessary to repeat it?

(Tr. p. 5569)

Q. Well, did I do an injustice to what you said? Did I summarize correctly what you testified? A. You will have to read me what I said.

Mr. Royall: Tell him what you testified. Isn't it simpler, Mr. Tincher?

Mr. Tincher: She can read it.

(Answer read.)

The Witness: Yes, but that isn't all of it. I also said that this made our prices consistent in that market at the new high level and that it caused me a great deal of concern and I tried to work with the distributor in terms of trying to get an answer to it. We had not been able to find a satisfactory answer and that it cost us volume in the market.

By Mr. Tincher:

Q. Yes, sir, I am not saying you didn't testify to all the rest of your testimony: I am just bringing some of it to your attention. And that in essence was because the Clorox price was too high, is that right, at the grocery store? A. Well, it made our prices higher in that area than they had been for some time previously.

Bernard Franklin Trimpe—Cross

Mr. Royall: Mr. Tincher, what do you mean "at the grocery store?" You mean sold by the grocery store?

Mr. Tincher: Yes, on the shelves.

(Tr. p. 5570)

By Mr. Tincher:

Q. When was the date of this activity, sir? A. I will have to check my records again.

Q. You don't recall? A. I think I stated in the record but it has been going on for almost a year now, I think.

Q. Throughout most of '58? A. Yes.

Q. Let me ask you, Mr. Trimpe, if it isn't a fact that during that particular period of time some grocery chains were selling Clorox at a reduced price lower than its regular price to the public? A. That certainly is correct and the reason that was correct is this was one of the things we were able to attain. We went in and got the distributor to get some price features in order to get us, try to reestablish, this is a technique of selling, where you go in and try to get someone to feature your product at the old price or even lower if at all possible and in a market that is like that it was met and I think if you will check the record, tear sheets, you will see when one chain features it the others meet it immediately and if you will check my IBM records you will find that immediately solved our problem for a short period of time and we got some volume.

After that was over the price went back up again.

(Tr. p. 5571)

and we started losing volume again.

Bernard Franklin Trimpe—Cross

Q. I will hand you Commission's Exhibit 659 for identification, sir, and I will refer you to an advertisement of Clorox therein and I will ask you if this is not a Philadelphia example of the situation I was just talking about (handing document to the witness)? A. Yes, that is an example of the price feature that we got from one of the direct buyers in the Philadelphia market. It calls attention to two things, the fact that the price was 63 cents, regular 63 cents a gallon, that Clorox is featured at 49 cents. It does not in any way reflect a price reduction on our part but a feature on the part of the direct buyer.

Mr. Tincher: All right, sir, I think I will offer this exhibit.

(Tr. p. 5572).

Hearing Examiner Haycraft: To prove what?

Mr. Tincher: To prove this witness' testimony that during this period in Philadelphia they were losing business because Clorox was being sold too high by grocery stores. The converse was true, it was also being sold very low.

Mr. Royall: He already testified to that.

Hearing Examiner Haycraft: I don't see that it contradicts anything. I don't know whether there is any objection to it or not, but I am not going to take it.

By Mr. Tincher:

Q. You have just testified that there was a 14 cents difference at the retail level? A. Yes, sir.

Q. How was the grocer persuaded to make this 14 cent reduction? A. He was persuaded by what I like to think is a necessary function in our business and Mr. Fitzwater, who is our distributor, went in and discussed this situation, I am assuming in this case, with the Best

Bernard Franklin Trimpe—Cross

market. No, it wasn't Best; yes, it was Best, and he convinced them that Clorox was being carried at too high a price and on the basis of loyalty and many other factors and because primarily Clorox is still a very good loss leader to get traffic into the stores, maybe Best markets were suffering a little business volume and wanted to put in a series of features.

(Tr. p. 5573)

If you look at that ad there are features on other stabilizers.

Q. Like Crisco? A. I noticed there were several. Best markets have been sold, maybe he was able to sell them on a feature. I assure you the Clorox Company did not reduce the price to Fitzwater and he did not reduce his price to Best Markets.

Q. You got the same results as if you had? A. We got a price feature which we get daily because of the value of Clorox to bring customers into the store as a loss leader.

* * * * *

Q. I will hand you record 4915, sir, and ask you to read that (handing document to the witness).

(Tr. p. 5574).

* * * * *

A. Yes, I state that we have lost market share in the Southeastern part of the United States and I think that one of the factors is private label competition.

* * * * *

Q. And that is subsequent to the acquisition as the question there indicates? A. Yes, that is when the private labels have gotten strong in the Southeast.

* * * * *

Bernard Franklin Trimpe—Voir Dire Examination

(Tr. p. 5575)

* * * * *

CROSS EXAMINATION (resumed)**By Mr. Tincher:**

Q. Mr. Trimpe, just before lunch I showed you record 4915 and I asked you if you didn't testify at that point that in the Southeast Nielsen territory subsequent to the acquisition that you had lost market share because of private label brands? A. I did testify to that, sir.

Q. I will hand you at this time, sir, what has previously

(Tr. p. 5576)

been marked as Commission Exhibit 646 for identification and I will ask you if that isn't the Nielsen market share figures on the quart equivalent basis for the Southeast for a period of time including subsequent to the acquisition (handing document to the witness)?

And prior thereto, as well, for a given period of time? A. Well, that is what it says it is. I have never seen it before, and it is not information on which I base my judgment.

Q. It is Nielsen for the Southeast, though, is it? A. It is stipulated as that, I mean it is indicated as that, yes.

Mr. Tincher: We offer the exhibit, sir, with reference to this witness' testimony about Southeast.

* * * * *

(Tr. p. 5577)

VOIR DIRE EXAMINATION**By Mr. Royall:**

Q. Am I correct, Mr. Trimpe, in recollecting that the private label problem is one of gallons? A. Well, may

Bernard Franklin Trimpe—Voir Dire Examination

I have a Nielsen to look at here for a minute or is that not possible?

Hearing Examiner Haycraft: Yes, you can ask for anything that will refresh your recollection.

Mr. Royall: Answer my question, it is primarily gallons?

The Witness: Yes.

By Mr. Royall:

Q. The paper he showed you doesn't purport to be confined to gallons, does it?— A. No, it does not.

* * * * *

(Tr. p. 5578)

* * * * *

Hearing Examiner Haycraft: Objection is overruled

(Tr. p. 5579)

and Commission's Exhibit 646 will be received in evidence.

* * * * *

The Witness: That is the reason I asked for this book, your Honor. When I came with the company in 1955 the share in the Southeast was 53.3, and by January of '57 it was 50.9, and in October-November, 49.2.

Now, in the early part of '58 we were concerned because, well, I was because I had lost four percentage points from 53.3 down to 49.2 in October-November of 1957. So, immediately after the first of the year, I still think it was May, but somewhere in that area, in the early part of January and February, we began to be concerned about it from the point of view of where did the problem lie? In what particular areas? So, I went on a trip down through the Southeast and into that trip we had Nielsen provided us with a per size break-out and we found that we had lost

Bernard Franklin Trimpe—Voir Dire Examination

20 percentage points on gallon volume in the Southeast, and that was where our problem was, and I don't remember exactly how I stated in there, but certainly, investigating the thing over a 90-day period we found that our problem was in private label gallons, not only in Florida, where I particularly made reference to because I was asked about whether we did anything in that area, I believe, but in other areas

(Tr. p. 5580)

of the Southeast.

So that is why we had a special run made. But over a long-range period we have lost about four percentage points and it has leveled off on pints and quarts and halves reasonably well, but on gallons we are down 20 percent.

By Mr. Tinch:

* * * * *

(Tr. p. 5582)

* * * * *

Q. You testified this morning that a new bottle in the Florida cities was different than the bottle used in Atlanta and Buffalo? A. Yes, sir; it was.

Q. Can you tell me what the difference is, by that I don't mean a scientific discussion, but by appearance?

A. First of all in Atlanta and Buffalo we had it only on quarts, as you know, and it was a revision—first of all we have never had a handle on quarts, so we put—how can I describe it?—just a little circular place to put your finger with a lip on it to make it easier for the housewife to pour on the quart bottle.

Now, on the new bottles that we have in Florida we do not have a handle on the quart, we have only revised

Bernard Franklin Trimpe—Redirect

(Tr. p. 5583)

the half gallon and gallon bottle to look a lot like this, also, but the Purex——

Mr. Pride: "This" meaning the water carafe.

The Witness: I am sorry.

Mr. Royall: Like this, what is that?

The Witness: The Purex bottle handle comes down and does not touch the bottom of the bottle, and the thing sticks out here——

Hearing Examiner Haycraft: Is the handle made out of some other material?

The Witness: No, it is made out of glass, but it is suspended in the air and it doesn't come back down and touch the bottle. Ours is made more like this, it comes back down and goes in and anchors at the bottom and we think this is a big safety factor in our bottle, and that is the difference.

By Mr. Tincher:

Q. Yours is a connected bottom whereas the Purex is not? A. That is correct.

Q. Thank you.

* * * * *

(Tr. p. 5589)

* * * * *

REDIRECT EXAMINATION

By Mr. Royall:

Q. Mr. Trimpe, there were a number of questions asked you about the southeastern situation and they were separated in time and I want to try to see just what your composite statement is.

As I understand it, you have some figures on the southeast territory, all sizes, for the period from '55 to January '58? A. Yes, sir.

Bernard Franklin Trimpe—Redirect

(Tr. p. 5590)

Q. And what were the differences in percentages for that period? I think you stated. A. Roughly percentage loss of 4 percent from about 53 down to 49.2, something like that.

Q. Now, in the period of January did you or did you not have a special inquiry made there as to the effect on the various sizes of bleach bottles? A. Yes, we did, because I am on the record, I believe, to say that in the period '55 up to '58 we tried several things to try to stop that downward trend, including Negro radio.

Q. I understand, but did you—— A. Yes, we had a special size audit from Nielsen.

Q. These were directed to you as to the question of private label bleach? A. Yes, sir.

Mr. Royall: Your Honor, are you following me on this?

Hearing Examiner Haycraft: Yes, sir.

Mr. Royall: Because I think the record is a little confusing on it.

By Mr. Royall:

Q. Where does the main question arise as to private label bleach, with the quart or half gallon or gallon bottle?

A. I am on the record, I believe, on the gallon size.

Q. On the gallon size?

(Tr. p. 5591)

A. Principally, although it is spreading now over the United States.

Q. It is spreading, but I mean at that time was that the principal one? A. The gallon size.

Q. Now, did you have your breakdown—I mean did you use this breakdown to make a special inquiry about the effect on the gallon sales in the private label stores? A.

Bernard Franklin Trimpe—Redirect

Both in our own records and then we had a Nielsen breakdown made.

(Tr. p. 5592)

Q. Now, what did you find as to the increase or decrease of gallon bottles in that territory from the first of January to the last figures you had?

A. We are down 20 percent.

(Tr. p. 5596)

Mr. Royall: Your Honor, just a couple of matters I want to clear up and we have no further evidence to offer except I am a little uncertain of whether you admitted the Purex annual statement for 1958, and I thought you did.

Hearing Examiner Haycraft: Do you know the number of it?

Mr. Royall: 114.

Mr. Tincher: I have no question about its

(Tr. p. 5597)

authenticity, I have a question as to its relevancy.

Hearing Examiner Haycraft: The objection is overruled, you can see what you want to do with it.

Respondent's Exhibit 114 for identification is received in evidence.

(Tr. p. 5605)

Proceedings

Room 332
Federal Trade Commission
Washington, D. C.

Friday, 23 January 1959

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 5606)

PROCEEDINGS

Hearing Examiner Haycraft: All right, this hearing will come to order.

This is a hearing in the matter of Procter and Gamble Company, held for the purpose of entering a ruling on the record with respect to a motion to strike which was made at the conclusion of the last session by handing to counsel and to the Examiner a longhand written memorandum prepared by Mr. Tincher and Mr. Deveny.

* * * * *

Hearing Examiner Haycraft: Taking up the various items seriatim,

* * * * *

(Tr. p. 5608)

* * * * *

Eleventh item, transcript 5162, lines 11 to 14, and 18 through 25, and page 5164, lines 1 through 24,—just 24 on that page—

Mr. Tincher: There, I think you skipped from Item 11 to part of Item 12. I think that is what caused the confusion.

Hearing Examiner Haycraft: I am only following your thoughts. Anyway, a motion to strike is granted.

Proceedings

Mr. Royall: On which?

Hearing Examiner Haycraft: From line 16 on page 5168 and from page 5164 through line 25.

Item 13, transcript 5165, line 4, motion to strike is granted.

Item 14, transcript 5167, line 21 through 25, is granted, in other words, they put an interim of part of the quotation there, the whole thing should go together. That is the reason—apparently when they lined this out, they did not include part of the answer, so the whole thing goes together.

And also, transcript 5168, lines 1 through line 4.

Item 15—

Mr. Royall: That was granted or not?

Hearing Examiner Haycraft: Granted. Motion to strike granted. Item 15, page 5168, transcript 5168,

(Tr. p. 5609)

beginning at line 8 through line 17, motion to strike is granted. I want to change that ruling, from line 8 to line 25 the motion to strike is granted, in other words, the whole thing goes together. You can't very well separate it. Motion to strike is granted.

Part of that same item, transcript 5169, lines 1 through 7, motion to strike is granted. Apparently part of that same item, because it does not have a different number, but transcript page 5170—

(Tr. p. 5613)

Mr. Royall: Your Honor, may I make a couple of statements, briefly? It wasn't left over, open on Mr. Morgan's testimony, you struck all of that.

Proceedings

Hearing Examiner Haycraft: Yes, sir.

(Tr. p. 5614)

Mr. Royall: Therefore, there was nothing left over, and we are not seeking to re-argue any one of these. I don't know whether this action of Your Honor will necessitate additional testimony for us or not.

The reason I say that is that possibly it might be that the form of the question, after it was the determining factor——

Hearing Examiner Haycraft: No, it was not. It was the subject matter.

Mr. Royall: And the same thing, I think applies to Mr. Morgens, it was not the form of the question.

Hearing Examiner Haycraft: No.

Mr. Royall: If it were, why we would want an opportunity to remedy it. But we will look over that, and unless we know today, there won't be any further requests, and I don't think there will be.

I want to say one other thing, I want to call Your Honor's attention again, it is already in the record, Your Honor's ruling, in the case of both of these witnesses, the record is in such shape, that Your Honor could, even after this ruling today, consider the matter.

Hearing Examiner Haycraft: That I could.

* * * * *

(Tr. p. 5616)

Mr. Tincer: Counsel gave us a Nelsen study of the Southeast United States, division of liquid bleach sales by package sizes, and this has reference to the testimony of Mr. Trimpe, that Clorox had lost the market share of the Southeast in the gallon sizes. That testimony came in the last hearing, and you said we should be provided with the basis of that testimony.

Proceedings

We have been given that information and the information we are given apparently is a Nelsen report. We don't challenge that. It is for a period of time from August-September '57 to August-September of '58, and it breaks out sizes, pints, quarts, half gallons, and gallons including three quarts, and we can say that in the gallon size, including three quarts, the Clorox has had a market share decline, but because the gallon size does include three quarts, which of course the record shows Clorox does not make, we feel that this has no probative value one way or another with reference to Mr. Trimpe's testimony, and I will give this exhibit back to counsel at this time.

* * * * *

(Tr. p. 5619)

* * * * *

Mr. Tincer: I would like to inquire, sir, at this point, respondent said at the last hearing, if they didn't notify us by the 20th of January, that defense had closed, and I assume that is the case now, and we are prepared for rebuttal.

Hearing Examiner Haycraft: I understand so.

* * * * *

(Tr. p. 5621)

* * * * *

Room 332
Federal Trade Commission
Washington, D. C.
Monday, 26 January, 1959

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

Proceedings

(Tr. p. 5622)

PROCEEDINGS

Hearing Examiner Haycraft: This hearing will come to order. This is a hearing in the matter of Procter & Gamble, Inc., an adjourned hearing, the last hearing in this matter having been held on the 23rd day of January 1959, at which time adjournment was taken to reconvene in this place at this time, for the purpose of taking testimony in rebuttal by counsel in support of the complaint.

Mr. Royall: Your Honor, may I call one matter about the record to your attention.

In looking over the transcript for January 9, it has just come to our attention that the record fails to show an answer to a question asked Mr. Morgens on page 5503. The circumstances are, Your Honor, that we asked Mr. Morgens "Do you distinguish between legal power to determine matters relating to the company and power in the marketplace?"

* * * * *

(Tr. p. 5623)

* * * * *

His answer would have been "Yes," or was "Yes."

Hearing Examiner Haycraft: We can stipulate that, I think.

Mr. Tincher: Yes.

* * * * *

Hearing Examiner Haycraft: Well, anyway it can be stipulated that the answer would have been yes and it was then stricken.

Mr. Tincher: I assume whatever counsel says the answer would have been yes.

* * * * *

Alan C. Stoneman—Direct

(Tr. p. 5626)

* * * * *

Alan C. Stoneman

was called on behalf of the Commission, and having been previously sworn, testified as follows:

* * * * *

(Tr. p. 5627)

DIRECT EXAMINATION

By Mr. Tincher:

* * * * *

(Tr. p. 5630)

Q. Now, Mr. Stoneman, we have had a considerable amount of testimony about the acquisition by your company of the Fleecy White brand of liquid bleach and will you tell us when that acquisition took place? **A.** Yes. It occurred in late October of last year.

* * * * *

(Tr. p. 5635)

By Mr. Tincher:

Q. Mr. Stoneman, speaking of the Fleecy White acquisition, will you tell us the business reason for Purex acquiring Fleecy White?

* * * * *

The Witness: There were several business reasons for the Purex acquisition of John Puhl Products Company, which owned Fleecy White liquid bleach.

One was that Purex had been unsuccessful in expanding its market position geographically on Purex liquid bleach. The economics of the bleach business, and the strong competitive factors as illustrated by our experience in Erie, Pennsylvania, made it impossible, in our judgment, for us to expand our market on liquid bleach. Fleecy White represented a brand that sold in fair volume in a limited geo-

Alan C. Stoneman—Direct

graphical area and this area represented an expansion of our geographical area.

Fleecy White's cost of doing business was relatively high, compared to ours. Therefore, the integration of this

(Tr. p. 5636)

company with Purex might represent some economies. These economies were, principally, in the field of selling costs, in the field of delivery costs, that is, distribution of merchandise from the factories to the wholesaler or retailer, in the field of administrative costs, and advertising costs.

(Tr. p. 5639)

Q. Can you tell us from the date of your last testimony,

(Tr. p. 5640)

which concluded May 1, last year, as I recall, what promotions have been used by Clorox in Erie, Pennsylvania up to the present time.

The Witness: Competitive activity in Erie resulted in a decline of Purex market share to a figure somewhat below 10 percent. I believe the minimum was 7.

The Witness: Prior to using the cents-off deal in September, there was a competitive promotion of an apron

(Tr. p. 5641)

premium in late July or August by Clorox. And subsequent to our cents-off deal, there was also a cents-off deal promotion by Clorox.

By Mr. Tinch:

Q. Did the subsequent cents-off deal that you referred to have a premium involved in it?

Alan C. Stoneman—Direct

The Witness: Well, the only premium I am aware of is the last July or early August apron premium. There may have been one later, I am not sure, Mr. Tincher. I have asked Mr. Northrup to prepare a schedule of the recent activity in the Erie market.

* * * * *

(Tr. p. 5652)

* * * * *

Q. Mr. Stoneman, are network television programs inappropriate for use with liquid bleach, because of the fact that there are regional producers of liquid bleach? A. No, we have used network television programs to advertise liquid bleach and we are a regional producer.

Q. And how do you do that sir? Is that a national program or how is it conducted? A. It is possible to split the country up into various segments, depending upon the circuitry of the network, and to advertise on a network program, say, in New York City, one product, and advertise a different product in Los Angeles at the same time. We did this frequently on the Perry Mason show.

* * * * *

(Tr. p. 5656)

* * * * *

Jack Northrup

was called as a witness for and on behalf of the Commission and being duly sworn assumed the witness stand and, upon examination, testified as follows:

Hearing Examiner Haycraft: Will you please give us your name and address.

The Witness: Jack Northrup, 9907 Shiloh, Whittier, California.

Jack Northrup—Direct

DIRECT EXAMINATION

By Mr. Tincher:

Q. Mr. Northrup, by whom are you employed? A.
By the Purex Corporation, Ltd.

Q. And what is your position with that company? A.
I am Director of Marketing Research and Product Planning.

(Tr. p. 5657)

Q. How long have you held that position? A. I have
had the title of Director of Marketing Research since 1957
and I have supervised those functions of the company since
1950.

Q. And what are those functions, sir? In other words,
what are your duties? A. I direct the marketing re-
search activities which include sales forecasting, sales and
market analysis, consumer research and testing, and those
kinds of activities.

* * * * *

Q. In the performance of your duties at the Purex Cor-
poration did you utilize Nielsen Food Index for Liquid
Bleach? A. Yes, we do.

Q. And at our request have you brought with you cer-
tain Nielsen data on liquid bleach? A. Yes, I have.

* * * * *

(Tr. p. 5692)

* * * * *

Room 332
Federal Trade Commission
Washington, D. C.

Tuesday, 27 January 1959

Met, pursuant to adjournment, at 10:00 a.m.

Alan C. Stoneman—Cross

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 5693)

PROCEEDINGS

* * * * *

Alan C. Stoneman

resumed the stand as a witness for the respondent and, previously having been duly sworn, was further examined and testified as follows:

(Tr. p. 5694)

CROSS-EXAMINATION

* * * * *

(Tr. p. 5713)

* * * * *

By Mr. Royall:

* * * * *

A. May I add to that, generally, that that means in effect that the combined percent of the population to whom we offer Purex liquid bleach and Fleecy White liquid bleach is about 16, plus 48, or 64 percent.

* * * * *

(Tr. p. 5733)

* * * * *

Q. Now, Mr. Stoneman, you started making private label bleaches for the Von's Stores, in 1958, did you not?

* * * * *

The Witness: Yes, this, may I add, generally, that this is a brand I happen to have personal knowledge of. I don't

Alan C. Stoneman—Cross

necessarily have personal knowledge of all of the brands of private label that we manufacture, when we started to make them or how much business we do in them:

By Mr. Royall:

Q. Sir? A. I said I don't have knowledge of all of the brands of private label when we started to manufacture them, or how much business we do in them. I do happen to know that we started to make Von's private label bleach in 1958.

Q. And how many stores do they have in Los Angeles?
A. They have about 23, I think—about 25.

(Tr. p. 5734)

* * * * *

Q. Mr. Stoneman, do you now have a broker in Portland, Oregon?

* * * * *

A. Yes.

By Mr. Royall:

Q. And when did he start to work with you? This year, wasn't it? A. No.

Q. I don't mean this year. 1958? A. No. I am not sure when he started.

Q. It was since your last testimony? A. I testified that we had several brokers.

Q. I mean Portland. I said Portland came after your last testimony, did it not? A. It is possible; I am not sure, generally.

* * * * *

(Tr. p. 5737)

* * * * *

Proceedings

Jack Northrup

resumed the stand as a witness for the Commission and, having been previously duly sworn, testified further as follows:

FURTHER DIRECT EXAMINATION

* * * * *

(Tr. p. 5741)

CROSS-EXAMINATION

By Mr. Royall:

* * * * *

(Tr. p. 5742)

Jack Northrup

was called as a witness for and on behalf of the Respondent and being duly sworn assumed the witness stand and, upon examination, testified as follows:

DIRECT EXAMINATION

* * * * *

(Tr. p. 5743)

Mr. Royall: Please mark this for identification.

(Whereupon, the document referred to was marked Respondent's Exhibit 117 for identification.)

* * * * *

(Tr. p. 5746)

Hearing Examiner Haycraft: 117 is received in evidence.

Jack Northrup—Cross

(Whereupon, the document referred to, heretofore marked for identification Respondent's Exhibit 117, was received in evidence.)

* * * * *

(Tr. p. 5751)

* * * * *

Mr. Royall: Now, your Honor, I am going to cross-examine the witness.

Whereupon,

Jack Northrup

was recalled as a witness for the Commission and, having been previously duly sworn, testified further as follows:

(Tr. p. 5752)

CROSS-EXAMINATION (RESUMED)

* * * * *

(Tr. p. 5772)

* * * * *

Room 332
Federal Trade Commission
Washington, D. C.

Tuesday, 3 February 1959

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 5773)

PROCEEDINGS

* * * * *

(Tr. p. 5794)

* * * * *

Norman D. Smith—Direct

Norman D. Smith

was recalled as a witness, and having been previously sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Deveny:

* * * * *

(Tr. p. 5876)

* * * * *

Mr. Deveny:

* * * * *

Miss Reporter, may I have marked for identification as Commission's Exhibit 696-A through J for identification a document entitled Manufacturers of Liquid Bleach in the United States showing Dun and Bradstreet's estimated financial strength, product classification, 1957?

(The document referred to was marked Commission's Exhibit No. 696-A through J for identification.)

Mr. Royall: Your Honor, we have never heard or seen this before.

Mr. Deveny: It is so agreed. Respondent is just now being given a copy of it, your Honor.

By Mr. Deveny:

Q. Mr. Smith, is this 696A through J something prepared under your direction and supervision? A. Yes, it was.

Q. Was this generally, Mr. Smith, what does it show? A. Well, it shows the Manufacturers of liquid bleach in the United States as reported in Respondent's Exhibit 112 listing the manufacturer's name and its location. These companies were checked in the Dun and Bradstreet refer-

Norman D. Smith—Direct

ence volume for their estimated financial strength and it is also

(Tr. p. 5877)

listed on the exhibit as well as the company's major product classification as reported by Dun and Bradstreet.

Q. Mr. Smith, why did you choose Dun and Bradstreet for running through this 112? A. Dun and Bradstreet reference volume is one of the volumes used by the Commission in checking the location of companies, some indication of their relative size.

Q. Well, you have indicated on here under the first column certain letters and footnotes, could you explain those to us, please? A. Those are code numbers, Dun and

Bradstreet Code numbers for the estimated financial strength of the respective company. The classification or key to these code numbers are listed in appendix A of the exhibit.

Q. Now, the footnotes, I presume that is what they are, the numbers, 1, 3, 4 and 5 what are they, in that same column? A. Well, the footnotes are listed on the tabu-

lation, in this case 3 indicates that the company was not listed in Dun and Bradstreet's reference book, and in the case of all companies not listed in Dun and Bradstreet they were checked in Thomas' Register of American Manufacturers and Thomas' Wholesale Grocery and kindred trades register which again are two sources used by the Commission in attempting to determine some information about companies which it wishes

(Tr. p. 5878)

to inquire about.

(Tr. p. 5880)

Norman D. Smith—Direct

Mr. Deveny: Of course, the purpose of our offer, if you are interested, Your Honor, is to show that many of the items listed on 112 apparently are not in existence.

(Tr. p. 5881)

Hearing Examiner Haycraft: That is quite obvious.

Mr. Royall: I don't think there is anything to indicate they are not in existence, Your Honor.

Hearing Examiner Haycraft: I say that is the purpose of the exhibit, to indicate that.

Mr. Royall: But there is nothing on the exhibit——

Hearing Examiner Haycraft: If they are not listed in Dun and Bradstreet, the chances are they are not in existence, that is the purpose of that.

Mr. Royall: I don't think so, there is certainly no evidence to that effect. Many concerns that are in operation are not carried in Dun and Bradstreet.

Hearing Examiner Haycraft: Of any consequence?

Mr. Royall: That comes to significance and consequence, I don't know.

Hearing Examiner Haycraft: Any significance then? I will take your own term.

Mr. Royall: There are some small businesses——

Hearing Examiner Haycraft: I know.

Mr. Royall: And the number of them according to the evidence has increased rather than decreased and whether that is——

Hearing Examiner Haycraft: In my judgment, though, a concern that is so small that it cannot be listed either in Dun and Bradstreet or any of these well-known directories

(Tr. p. 5882)

such as Thomas Register is not of sufficient significance to have any probative value in this case.

Norman D. Smith—Direct.

Mr. Royall: Yes, sir.

Hearing Examiner Haycraft: I don't think we are bothered with them or anybody is bothered with them, they would certainly be a fleabite in volume so far as the effect of their competition. I am going to take the exhibit subject to your checking it and if you find that there is anything wrong with it, it will be subject to a motion to strike.

Mr. Royall: Your Honor, you won't limit me on my motion to strike.

Hearing Examiner Haycraft: You can move to strike it for any reason that you find necessary, I don't care.

Mr. Royall: All right, sir.

Hearing Examiner Haycraft: That is received.

(The document referred to, heretofore marked Respondent's Exhibit 696 A through J for identification, was received in evidence.)

* * * * *

(Tr. p. 5913)

* * * * *

Room 332
Federal Trade Commission
Washington, D. C.

Wednesday, 4 February 1959

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 5914)

PROCEEDINGS

* * * * *

(Tr. p. 5952)

* * * * *

Proceedings

Mr. Tincher:

Now, I have what I allege to be a copy of the Procter & Gamble annual report for the year ended

(Tr. p. 5953)

June 30, 1958 which I would like to mark as Commission Exhibit 702. It is a paginated document in the lower right-hand corner, pages 1 through 15; and as Commission Exhibit 703 for identification a statement on the letterhead of the Procter & Gamble Company dated October 27, 1958 bearing the typed signature of the Chairman of the Board and the President of Procter & Gamble.

(The documents referred to were marked Commission Exhibits 702 and 703 for identification.)

Mr. Royall: Your Honor, I might shorten the matter, we will not deny as Procter & Gamble's statement for that year, while we haven't compared it I am confident that we can stipulate it is a correct report. However, I would object to it until it is shown to be relevant.

(Tr. p. 5956)

Hearing Examiner Haycraft: The objection will be overruled. Commission's Exhibits 702 and 703 for identification are received in evidence.

(Tr. p. 5976)

Hearing Examiner Haycraft: The mere fact that they shifted around and used different media, they may have done that before. In other words, that is something that

Norman D. Smith—Direct

naturally any organization that has got a product to be advertised is going to try to get the best medium they can get for the amount of money they have to spend. If they find out that one medium does not give what they think it should and they are attracted to another they are going to change.

(Tr. p. 5977)

That is the normal procedure.

(Tr. p. 5981)

Norman D. Smith

was recalled as a witness, and having been previously sworn, testified as follows:

REDIRECT EXAMINATION

By Mr. Tinch:

Q. Mr. Smith, at our request did you, after your cross-examination by Mr. Royall, go to the library and check to see whether or not the Rose-Lux Chemical Company or Corporation, whichever it is, of Brooklyn, New York, is listed in the Dun and Bradstreet reports that you used in preparing your survey of the liquid bleach manufacturers?

A. Yes.

Q. Is it listed? A. Yes. The reason it was omitted on our exhibit is the fact that the name is mis-spelled on Respondent's Exhibit 112, Rose-Lux is listed as two words, and in actual fact is spelled one word, so in preparing the exhibit it was checked with the two word name rather than the full name Roselux, one word.

On page 2744 of Dun and Bradstreet they list the Rose-

Norman D. Smith—Direct

lux (one name) Chemical Company, Inc., it is products designation 2819.

However, Dun and Bradstreet does not list any financial rating on the company.

(Tr. p. 5982)

Mr. Tinch: That is all.

Mr. Royall: Mr. Smith, you have not found any other instances of that, have you?

The Witness: No, we took our RX 112, the names as listed, it happened, it was called to my attention that Roselux is spelled R-o-s-e-l-u-x, one word rather than two.

Mr. Royall: So far as you know that is the only correction you want to make on the list?

The Witness: So far as I know, yes, sir.

Mr. Royall: All right, sir.

(Tr. p. 5997)

Room 332
Federal Trade Commission
Washington, D. C.

Tuesday, 10 February 1959

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

(Tr. p. 6015)

Room 332
Federal Trade Commission
Washington, D. C.

1507a

Proceedings

Thursday, 12 February 1959

Met, pursuant to adjournment, at 10:00 a.m.
BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 6016)

PROCEEDINGS

* * * * *

(Tr. p. 6023)

* * * * *

Mr. Deveny: At this point, your Honor, I will read into the record the stipulation as agreed to by counsel for both sides of the case.

(The stipulation follows:)

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

**In the Matter of
THE PROCTER & GAMBLE COMPANY,
a corporation.**

DOCKET 6901

**STIPULATION OF THE FACTS ON
THE CASE IN REBUTTAL**

(Tr. p. 6024)

The following numbered, attached hereto, Commission Exhibits 707-A through P are copies of interview reports made through the joint efforts of respondent's representative, Robert W. Bergstrom, and Federal Trade Commission Attorney Examiner, Charles W. Johnson, with all bleach producers listed on Respondent's Exhibit 112 A-U for Chicago, Illinois, except Linco Bleach Company, Hy-

Proceedings

drox Chemical Company of Illinois, and O-So-White Products Company. It is agreed between counsel for respondent and counsel supporting the complaint that the exhibits correctly report the said interviews. Respondent does not agree that conversion or dilution does not constitute manufacturing. Counsel supporting the complaint believes that conversion or dilution does not constitute manufacturing.

It is agreed that the O-So-White Products Company manufactures liquid bleach for laundry supplies including sodium hypochlorite. It is further agreed that the Eagle Bleach Products Company is a division of Barton Chemical Company and that Eagle Bleach Products Company manufactures bleach for industrial use only and not for household consumption.

Also attached hereto are Commission Exhibits 708 and 709, letters from the Hydrox Chemical Company of Illinois and O-So-White Products Company. It is agreed between counsel for respondent and counsel supporting the complaint that the letters are authentic and reflect the views of the writers.

(Tr. p. 6025)

Counsel for respondent reserve the right to object to the exhibits on the basis of relevancy and materiality. This agreement in no way waives their rights with respect to these objections.

* * * * *

Hearing Examiner Haycraft: Do you agree to that stipulation?

Mr. Royall: Yes, sir, we agree to it and we have no sur-rebuttal on it.

Hearing Examiner Haycraft: What about these exhibits, does that stipulation refer to these Exhibits 707, 708 and 709?

Proceedings

Mr. Deveny: Yes, sir.

Hearing Examiner Haycraft: Are you going to offer these exhibits in evidence, 707-A to P, 708 and 709?

(Document was handed to the Examiner.)

Mr. Deveny: Your Honor, at this time we offer 707-A through P and 708 and 709.

(Tr. p. 6026)

Hearing Examiner Haycraft: Those are the ones that are mentioned in the stipulation?

Mr. Deveny: That is correct.

Hearing Examiner Haycraft: All right, they may be received in evidence.

(The documents heretofore marked Commission Exhibits 707-A through P, 708, and 709 for identification were received in evidence.)

* * * * *

(Tr. p. 6029)

* * * * *

**STIPULATION OF THE FACTS
ON THE CASE IN REBUTTAL**

A. E. Gilfillian, Legal Department, American Stores Company, if called as a witness, would testify as follows:

1. The date on which Nu Way Stores began to broadcast Beamcast advertisements generally was May 7, 1956.
2. The dates on which Nu Way Stores introduced gallon and half gallon sizes of "Speed-Up," private brand liquid bleach was September, 1954, and quart sizes in April, 1955.
3. No brands or sizes of brands of liquid bleach were dropped by Nu Way Stores when it introduced "Speed-Up" private brand liquid bleach.

Proceedings

4. Nu Way Store purchases of liquid bleach by sizes and brands for the period beginning January 1, 1957, through September 30, 1958, are as follows:

(Tr. p. 6030)

BRAND	CASES	COST
QUARTS		
Speed-Up	2,758	\$ 3,702.20
101	7,840	14,999.00
Clorox	16,705	31,678.85
½ GALLONS		
Speed-Up	3,231	4,221.46
101	10,455	18,440.33
Clorox	22,670	39,872.93
GALLONS		
Speed-Up	3,933	5,465.68
101	8,400	15,886.40
Clorox	20,872	39,303.05

6. Purchases for Clorox brand bleach by sizes for period October 1, 1958 through November 30, 1958 are as follows:

	CASES	COST
QUARTS	1,620	\$3,032.32
½ GALLONS	2,580	4,702.82
GALLONS	2,025	3,929.31

7. Nu Way Stores has 70 outlets at present, which cover a sales territory of western New York and the northwestern tip of Pennsylvania consisting of three stores.

(Tr. p. 6036)

Proceedings

Mr. Royall: Your Honor, we agree to the stipulation as read in the record.

* * * * *

(Tr. p. 6037)

* * * * *

Mr. Deveny: Your Honor, we would like to tender—it is my understanding that this is an agreed stipulation so we would like to have it—

Mr. Royall: It is agreed on, your Honor.

Hearing Examiner Haycraft: Let's hand it to the reporter.

What does this relate to?

Mr. Deveny: That relates to sales figures of Mr. Gardiner, 101 brand bleach, through LobLaw Stores and Nu-Way Stores, calendar years '57 and '58.

Hearing Examiner Haycraft: And you agree to that?

Mr. Royall: We agree to the stipulation, we want to make an objection as to relevancy.

(Tr. p. 6038)

* * * * *

Mr. Royall: Our objection to relevancy, your Honor, is that it covers the calendar years 1957 and 1958 and therefore does not disclose the conditions before and after the acquisition and, therefore, is not relevant to this.

Hearing Examiner Haycraft: This goes to conditions both before and after but not at the time.

Mr. Royall: It doesn't show the condition at the dividing line, and I don't want to argue that, your Honor, that may go to the weight more than anything else.

Hearing Examiner Haycraft: Your objection will be overruled on that and the stipulation will be received.

(The stipulation follows:)

Proceedings

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

In the Matter of
THE PROCTER & GAMBLE COMPANY
a corporation.

**DOCKET 6901
STIPULATION OF THE FACTS
ON THE CASE IN REBUTTAL**

R. A. Gardiner, President, Gardiner Manufacturing Company, Inc., if called as a witness would testify as
(Tr. p. 6039)

follows:

1. The following listed sales by cases and sizes are for the calendar years as indicated of 101 Brand Liquid Bleach to the LobLaw and Nu-Way Stores.

a. LobLaw Sales

	GALLONS	1/2 GALLONS	QUARTS
1957	14,194	18,390	13,740
1958	13,545	15,920	11,560

b. Nu-Way Sales

1957	5,195	6,826	5,011
1958	4,739	5,430	4,140

* * * * *

(Tr. p. 6040)

* * * * *

**STIPULATION OF THE FACTS
ON THE CASE IN REBUTTAL**

L. S. Frantz, Vice President in Charge of Sales, LobLaw, Inc., if called as a witness would testify as follows:

1. Beam-Cast operations began in LobLaw's stores in September, 1951, but Beam-Cast's advertising of 101 brand liquid bleach began on August 4, 1958.

Proceedings

2. Beam-Cast merchandisers (girls) are permitted to visit the LobLaw's stores to check shelf representations of the products advertised and reports of these store visits showing out-of-stock conditions are sent to LobLaw from time to time.

3. The decision as to how much shelf space is to be allocated to a particular item is left completely up to the manager of the individual stores.

(Tr. p. 6041)

4. It is the policy of LobLaw organization not to allow the Beam-Cast people and employees to make such shelf space decisions for the store manager.

5. It is the policy of LobLaw organization that food broker's and manufacturer's representatives are not allowed to make such shelf decisions for the store manager.

6. LobLaw, Inc. issued a memorandum on July 13, 1957, to all of its LobLaw supervisors as follows:

"BEAM-CAST—Should there be any misunderstanding in regard to shelf facings of any or all merchandise in stores, kindly make *sure* your managers understand they are the 'last word' in determining the space to be given each and every item. In short, Beam-Cast representatives are not to dictate shelf facings on items using or not using this advertising medium."

7. On November 24, 1958, LobLaw, Inc. issued the following memorandum to all store managers:

"BEAM-CAST SHELF ALLOCATION"

"The number of facings to be awarded to any Beam-Cast sponsor is entirely up to you, the store manager.

'Remember, you and you alone (as manager) are the judge of shelf allocation. Use your prerogative wisely.'"

Proceedings

(Tr. p. 6042)

8. On occasion, there may be a manager here or there, through either the fact that he is new or through the kindness of his heart, who might be persuaded to favor Beam-Cast items. However, if and when this happens, as concerns Beam-Cast or any other items, we feel reasonably certain that the Supervisor or Superintendent will remedy the situation.

9. No union contract agreement in Buffalo, New York restricts outside manufacturers or broker's representatives from going into the stores and offering their services.

10. To the best of LobLaw's knowledge, no communication to LobLaw store managers was issued as a result of a conversation with Mr. Bennett.

11. Mr. Bennett has voiced his opinion as to shelf representation but he is no different from any other food broker or manufacturer's representative.

12. Purchases of liquid bleach, August 1, 1957, through November 30, 1958, in Buffalo, New York warehouse of LobLaw, Inc. are as follows:

101 BRAND

SIZE	CASES	COST
Gallon	18,320	\$34,954.02
1/2 Gallon	22,409	39,897.44
Quart	16,095	31,010.62

(Tr. p. 6043)

CLOROX

SIZE	CASES	COST
Gallon	47,465	\$ 93,021.10
1/2 Gallon	58,806	107,867.06
Quart	40,774	79,770.84

Proceedings

13. LobLaw operates 100 stores out of the Buffalo, New York warehouse.

* * * * *

Mr. Royall: We have no objection to it.

* * * * *

(Tr. p. 6052)

* * * * *

**STIPULATION OF THE FACTS
ON THE CASE IN REBUTTAL**

Lawrence Gordon, Executive Vice President of Beam-Cast, if called as a witness would testify as follows:

(Tr. p. 6053)

1. Beam-Cast Inc., operates spot announcement advertising over FM radio which is received on special equipment in grocery stores as well as on regular FM radios.

2. The company does not refuse advertising to producers of products competitive with products which Beam-Cast is already advertising.

3. No such assurances of exclusive participation are given the customers of Beam-Cast.

4. Employees of Beam-Cast are sent to stores broadcasting the announcements to check on the movement of items advertised.

5. Inventory is checked by employees of Beam-Cast with the store manager concerned to aid in eliminating out-of-stock conditions and to rotate perishable items.

6. With the store manager's approval, employees of Beam-Cast install shelf reservers to indicate the facings allocated to Beam-Cast items by the store manager.

7. In general Beam-Cast employees see to it that after the consumer's attention is called to a product by the spot

Proceedings

radio commercial, he will not be disappointed when he goes to the shelf.

8. Beam-Cast has received instructions in most stores that under no circumstances may its employees change any shelf facings unless they are authorized to do so by the

(Tr. p. 6054)

store manager.

9. Where an advertiser's product has received additional shelf space, it is not because Beam-Cast employees appropriated it, but because the store manager decided it was good business. When an in-store broadcast advertising one of our sponsor's products brings about an increase in consumer demand for that product in that store, the amount of shelf space allocated is often increased accordingly. But this represents the exercise of the manager's best business judgment, not the pressure exerted by Beam-Cast employees.

10. Shelf space is essentially a reflection of how fast a given product sells in a given store.

11. If an item advertised by Beam-Cast is found to be out-of-stock, it is called to the attention of the store manager by employees of Beam-Cast so that he can reorder the item.

12. Observations by Beam-Cast indicate that in the stores carrying the Beam-Cast advertising for 101 brand, Clorox has more shelf space than 101.

13. From its observation, Beam-Cast testifies that national advertising of a top brand name by the field's largest manufacturer is more effective than local in-store radio announcements.

14. Beam-Cast cannot overcome the tremendous

(Tr. p. 6055)

advantage of the large company with the big name.

Proceedings

15. Beam-Cast only tries to assist a smaller company, like 101, to compete more effectively with a leader, like Clorox.

16. Beam-Cast has been giving the Clorox distributor a run for his money and will continue to assist its advertisers to compete with Clorox as effectively as possible.

17. The attached list of clients designated as CX 711-A 7 B are the clients who are now participating on Beam-Cast as of January 22, 1959. As can be seen from this list Beam-Cast enjoys national manufacturers as clients and does not represent solely regional manufacturers.

* * * * *

(Tr. p. 6056)

* * * * *

Hearing Examiner Haycraft: Is that agreed to?

Mr. Royall: Your Honor, the stipulation agreed to subject to relevancy, we think that two of the paragraphs are irrelevant and a part of another one. I will read those if I may.

Your Honor, the two paragraphs I will take them up separately which we think are irrelevant. One is No. 13 which reads as follows:

"From its observation, Beam-Cast testifies that national advertising of a top brand name by the field's largest manufacturer is more effective than local in-store radio announcements."

Hearing Examiner Haycraft: That is the opinion and as you indicated in your statement awhile ago if you cross-examined him you might qualify somewhat, but it is relevant.

Mr. Royall: We think it is opinion evidence.

Hearing Examiner Haycraft: It is opinion evidence

Proceedings

and, of course, your objection as to its weight, would be as to its weight as to whether or not it would be received.

Mr. Royall: We don't think it is admissible, your Honor.

Hearing Examiner Haycraft: I think it is admissible. The objection will be overruled on that ground.

(Tr. p. 6057)

Mr. Royall: All right, the next one is 14.

"Beam-Cast cannot overcome the tremendous advantage of the large company with the big name."

That is the rankest sort of opinion.

(Tr. p. 6058)

Hearing Examiner Haycraft:

I will sustain the objection as to this particular paragraph but not strike it. I mean, I will not make a finding based on that paragraph, paragraph 14.

(Tr. p. 6067)

Mr. Royall: Your Honor, there are two things we want to offer by Mr. Trimpe.

Your Honor will recall the discussions about the loss of sales in Buffalo and Atlanta.

(Tr. p. 6068)

Mr. Royall:

We have here a memorandum made in the regular course of business by Mr. Trimpe on June 20, 1958, addressed to

Proceedings

Mr. Fred Brown, President of Clorox, which deals with this question, and all we wanted to do was to have Mr. Trimpe identify this and offer it in evidence. That is the first question we have got.

* * * * *

(Tr. p. 6070)

Hearing Examiner Haycraft: 129 is what the number will be.

Are you objecting to it, Mr. Tincher? Mark it Respondent's Exhibit 129-A and B for identification.

(The document referred to was marked Respondent's Exhibit No. 129-A and B for identification.)

* * * * *

(Tr. p. 6071)

Hearing Examiner Haycraft: The objection is overruled, Respondent's Exhibit 129A and B for identification is received in evidence.

(The document referred to, heretofore marked Respondent's Exhibit, 129-A and B for identification, was received in evidence.)

* * * * *

(Tr. p. 6096)

Hearing Examiner Haycraft: All right, this hearing stands adjourned. It means I am closing the taking of testimony when I close this hearing.

(Whereupon, at 12:25 p.m. the hearing in the above-entitled matter was adjourned.)

* * * * *

1520a

Proceedings

(Tr. p. 6097)

* * * * *

Room 532
Federal Trade Commission
Washington, D. C.

Tuesday, 16 June 1959

Met, pursuant to notice, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 6223)

* * * * *

Room 532,
Federal Trade Commission,
Washington, D. C.

Thursday, 30 November 1961

Met, pursuant to notice, at 10:00 o'clock a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

APPEARANCES:

J. WALLACE ADAIR, Attorney for the Federal Trade
Commission.

(Tr. p. 6224)

PROCEEDINGS

Hearing Examiner Haycraft: On the record.

This is a hearing in the matter of Procter and Gamble Company, Federal Trade Commission Docket No. 6901, to take further evidence concerning the competitive effects of respondent's acquisition of Clorox Chemical Company.

Proceedings

It is held pursuant to the direction of the Commission in order dated June 15, 1961.

Mr. Adair, do you have any statement to make at this time?

Mr. Adair: Yes, sir.

Mr. Examiner, for the past several weeks I have been in contact with respondent and we have at the present time been working on a stipulation as to the documentary evidence which we propose to offer on this record. At this time I request a recess for 24 hours, until tomorrow morning at ten o'clock, at which time I will offer in evidence certain documents, at which time I anticipate that I will be in a position to close the Commission's case on the remand.

Hearing Examiner Haycraft: I observe that the counsel for respondent is not present this morning. Can you account for that, Mr. Adair, just for the record?

Mr. Adair: Yes, sir. Counsel for respondent, as I understand it, does not recognize this as a valid hearing, and would feel that if they made appearance that would in

(Tr. p. 6225)

effect recognize this hearing. I anticipate that they will be present tomorrow morning and that we will be able to go forward to complete the case.

Hearing Examiner Haycraft: I might also say for the record, just to make sure that everything is thoroughly understood, that the Examiner as well as the Commission are defendants in the suit which has been brought by respondent calling for an injunction and a further proceeding as indicated by the remand which the Commission served on the Hearing Examiner in June 1961, and that my understanding is that this matter is pending in the court

Proceedings

and that perhaps some settlement will be made during the next 24 hours so that we may proceed tomorrow.

Mr. Adair: That is my understanding, also.

Hearing Examiner Haycraft: Then this hearing will recess at this time, to reconvene tomorrow morning at ten o'clock in Room 332—not 532, in Room 332.

* * * * *

(Tr. p. 6226)

* * * * *

Room 332,
Federal Trade Commission
Washington, D. C.

Friday, 1 December 1961

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner

APPEARANCES:

J. WALLACE ADAIR and V. ROCK GRUNDMAN, JR., Attorneys for the Federal Trade Commission
KENNETH C. ROYALL, FREDERICK W. R. PRIDE, and ROBERT D. LARSEN, Royall, Koegel, Harris & Caskey, 1730 K Street, N. W., Washington 6, D. C., Attorneys for the Respondent.

(Tr. p. 6227)

PROCEEDINGS

Hearing Examiner Haycraft:

* * * * *

The purpose of this hearing is to take further evidence concerning the competitive effects of the respondent's acquisition of Clorox Chemical Company. It is held pursuant

Proceedings

to the direction of the Commission in an order entered on June 15, 1961. That portion of the order that relates to the subject matter of this hearing I shall read into the record at this time.

"It is further ordered that this proceeding be and hereby is remanded to the Hearing Examiner for the reception of such evidence concerning the competitive effects of the aforementioned acquisition as may be offered in conformity with the views expressed in the accompanying opinion of the Commission."

In the opinion of the Commission in which it referred to the remanding, which I take it to be my instructions, the case will therefore be remanded to the Hearing Examiner for the reception of evidence relating to the competitive situation as it presently exists in the liquid

(Tr. p. 6228)

bleach industry.

"This evidence should relate to events occurring subsequent to November, 1958, and should include market share data in each of the geographical regions specified on page 17 of the initial decision, as well as information directed to more clearly delineating the production and merchandising facilities and techniques which have been utilized by Clorox under the control of Respondent."

I wish also to state at this time that the injunction proceeding in the District Court which was brought by the respondent against the Examiner and the Commission, and which was pending yesterday—that is, at the time the hearing was held yesterday morning—has been resolved and an order has been entered in the District Court as follows:

Proceedings

"Plaintiff's motion for temporary restraining order coming on to be heard, and counsel representing all of the defendants having stated that the only evidence which will be offered on behalf of the Federal Trade Commission in the proceeding before that Commission, bearing Docket No. 6901, will consist (except to the extent necessary in rebuttal to any evidence hereafter introduced by Plaintiff) of documentary evidence all of which has been shown to Plaintiff's counsel today, and

(Tr. p. 6229)

the witness to authenticate such documents; and further, having stated that the introduction of such evidence will not consume more than two hearing days, December 1, 1961 and December 4, 1961, wherefore it is on this 30th day of November 1961 ordered that the motion for temporary restraining order is denied without prejudice."

"Signed by Joseph C. McGarragh, United States District Judge."

Gentlemen, what I have just read will be my guidepost in holding this hearing.

Mr. Royall: Your Honor, may I make a preliminary statement?

We do not believe that we are legally here, and we must state at this time that we do not waive the rights, such rights as we may have under the pending case.

In order to do that and to be sure that we have not waived the rights and that our position is clear, I would like to move before your Honor that you rule on it, the question of whether this case should now be dismissed. In making that ruling we certainly recognize that you are under orders to proceed, but still from our standpoint we do make that motion.

Proceedings

We move that this be dismissed on the ground stated in the complaint in the District Court, the material parts of which, somewhat abbreviated, I would like to put in the

(Tr. p. 6230)

record.

The grounds are that this attempted remand deprives Procter and Gamble of its property without due process of law and in violation of Article V of the Constitution; that following four years of investigation and trial it was the duty of the Commission to conclude the case instead of remanding it; that the order of remand was issued without any prior notice to Procter and Gamble; that the order violates the Clayton Act and the Commission's Rules of Procedure in that it purports to re-open the proceedings after all proceedings were closed without any showing of compliance or otherwise complying with the acts and rules of the Commission relating to re-opened proceedings; that the order was made arbitrarily, without even the request therefor by the Commission's counsel and without any showing to justify it; and that the order was made without any statutory right, but on the contrary was in derogation of the pertinent statutes and rules which have been mentioned and constitute a harrassment of the plaintiff in that case, respondent here, and that the order violates the requirement of impartial conduct by the Commission in that the Commission has acted not in a quasi-judicial capacity but in its prosecuting capacity for the purpose of giving to the Commission's counsel additional opportunity when the Commission itself has found that the evidence did not justify any relief against the respondent in

(Tr. p. 6231)

this action.

Proceedings

I make that motion. I do not care to argue it except to the extent I have presented it to your Honor.

Mr. Adair: Mr. Examiner, I don't want to argue it either, but I do oppose the motion to dismiss and I take the position that the respondent is properly before the Hearing Examiner and that this is a duly constituted hearing for the taking of testimony on the remand of this case.

I see no reason in the present posture of this case why you, the Hearing Examiner, should not at this time begin taking evidence as directed by the Commission.

Hearing Examiner Haycraft: In view of the fact that the Court before which counsel for the respondent presented their complaint has entered an order which I read a moment ago, in which they denied their motion for restraining order, I feel free to go forward. I am under a mandate from the Federal Trade Commission. The motion, in review of those two facts, is denied.

* * * * *

(Tr. p. 6235).

* * * * *

Mr. Adair: Next is Commission's Exhibit 718A-F for identification.

This document is identified on the first page as "Clorox Promotions, July 1958-Current."

* * * * *

The first column is headed, "First shipment date." The second is inked in, and headed, "Cost in M dollars," interpreted to be cost in thousands of dollars.

The third is, "Promotion," and the fifth is, "Area."

By way of explanation, we requested counsel to furnish us certain information with regard to the Clorox promotions. This is the information that they furnished us.

Proceedings

(Tr. p. 6236)

It has the column "Promotion," which is a brief description of the promotion, that is, the type of promotion, and then under, "Area," it identifies the area by broker area, that is, the Clorox broker area. So where you see the name "Raley," that refers to the broker area.

Then I have marked for identification as Commission's Exhibit 719 a map of the United States,—

* * * * *

(continuing) —which I shall also offer with Commission's Exhibit 718 for identification, which is a map of the United States, which shows the geographic area covered by each of the named brokers shown under the column "Area" in Commission's Exhibit 718. The broker names are in little black boxes across the map.

The broker areas are identified on the map of the United States by the use of heavier black lines delineating certain counties and states of the United States.

I offer in evidence Commission's Exhibit 718A-F, and Commission's Exhibit 719 for identification.)

(Whereupon, the documents referred to were marked Commission's Exhibits 718A-F and 719 for identification.)

* * * * *

(Tr. p. 6237)

* * * * *

Hearing Examiner Haycraft:

* * * * *

I also understand from an examination of this exhibit—so that we will know what we are talking about—that when you say "current" you mean it runs from July 1958 through July 1961.

Proceedings

Mr. Adair: That is what it actually does. I was just reading the title.

* * * * *

(Tr. p. 6238)

* * * * *

Mr. Pride:

* * * * *

We object, your Honor, to the admission of this evidence, the basis of that objection being that standing alone this listing of promotions and this description of them in and of itself is without significance insofar as any of the real issues of this case are concerned. And the reason for that is, among other things, that without some showing of the competitive situation, the competitive activities of other distributors of liquid bleach in the particular territories in which some one or more of these promotions were to be conducted, no deductions can be drawn as to any competitive effect or otherwise.

Furthermore, you will note that some of these promotions have opposite them the word "test," indicating, as explained by Mr. Adair, that the primary purpose of the promotion was to test or gauge the public reaction to that particular type of promotion. The primary purpose was not brought on by competitive considerations.

We simply feel, Mr. Examiner, that this information standing alone is not meaningful to you and will not be meaningful to anyone endeavoring to relate it to any issue in

(Tr. p. 6239)

this case.

Hearing Examiner Haycraft: What do you have to say to that, Mr. Adair?

Mr. Adair: Mr. Examiner, you will recall the record of this case; it shows that the pattern of promotions used

Proceedings

by Clorox before the acquisition and pretty much up to the time the case in chief was closed. This shows Procter and Gamble's pattern of promotions after the acquisition. It is our position that it is probative and material evidence of the type of competition and the changes in competition which Procter and Gamble has chosen to engage in since the acquisition.

* * * * *

(Tr. p. 6242)

* * * * *

Mr. Adair: You don't have any question, do you, Mr. Pride, that they are consumer promotions?

Mr. Pride: Just glancing at these I have no indication that they are not.

Hearing Examiner Haycraft: You will have an opportunity to disprove that. In other words, that is the nature of the offer.

(Tr. p. 6243)

Mr. Pride: Of course, amplifying what I have said, Mr. Examiner, there is no indication here whether any of these were conducted because of competitive influences coming into the bleach industry, not necessarily related to liquid bleach, but the impact of other competitive forces.

Hearing Examiner Haycraft: If you have any testimony on that point, you will be allowed to present it. I think, however, that this does come within the mandate of the remand. The exhibits will be received in evidence.

* * * * *

(Tr. p. 6245)

* * * * *

(Whereupon, the documents referred to, heretofore marked Commission's Exhibits 718A-F and

Proceedings

719 for identification, were received in evidence and ordered SEALED.)

(Tr. p. 6247)

Mr. Adair: The next series of exhibits relate to Nielsen information. The first is marked as Commission's Exhibit 720 for identification. It is entitled "Nielsen Food Index Territories." It is a map of the United States, broken down into the Nielsen areas.

(The document referred to was marked Commission's Exhibit 720 for identification.)

Mr. Adair: Commission's Exhibit 721-A through Z-45 for identification consists of pages from Nielsen's Food Index series which were subpoenaed from the Purex Company and begin with the period December-January 1952-53.

Hearing Examiner Haycraft: For that year; that is the first year?

(Tr. p. 6248)

Mr. Adair: Yes, sir, this is the beginning of the series.

Hearing Examiner Haycraft: And runs through what period of time?

Mr. Adair: It runs through June-July 1961.

These tables relate to the consumer sales dollar basis at cost price to consumer.

Hearing Examiner Haycraft: On what product?

Mr. Adair: All the tabulations relate to bleach, household bleaches.

(Tr. p. 6260)

Hearing Examiner Haycraft: There is received, then, in view of the statement made by counsel, there is now

Proceedings

received in evidence Commission's Exhibits 720 and 721A-Z45, with the understanding that 721U, Nielsen Report for October-November, 1956, may be presented later but incorporated in this series of exhibits without further order.

* * * *

(Whereupon, the documents referred to, heretofore marked Commission's Exhibits 720 and 721A-Z45 for identification, were received in evidence, Commission's Exhibit 721A-Z45 being ordered SEALED.)

* * * *

(Tr. p. 6261)

* * * *

Hearing Examiner Haycraft:

* * * *

Do you have anything further, Mr. Adair?

Mr. Adair: No, sir, that is all the evidence we have to offer.

(Tr. p. 6262)

* * * *

Mr. Royall: I assume that closes the Government's case.

Hearing Examiner Haycraft: I assume so.

Mr. Adair: Yes, sir.

* * * *

(Tr. p. 6264)

* * * *

Room 532,
Federal Trade Commission
Washington, D. C.

Tuesday, December 12, 1961

Met, pursuant to adjournment, at 10:00 a.m.

Harry Nickelson—Direct

BEFORE:

EVERETT F. HAYCRAFT, Hearing Examiner.

* * * * *

(Tr. p. 6265)

PROCEEDINGS

* * * * *

(Tr. p. 6267)

* * * * *

Mr. Royall: The evidence which we will introduce will cover the period covered by the complainant's evidence introduced last Monday and will be confined to that period.

* * * * *

(Tr. p. 6268)

* * * * *

I now offer as Respondent's Exhibit 133-A through Z and Z-1 through Z-44 these Neilson reports relating to market share on a 32-ounce equivalent basis, for each bi-monthly period from August-September 1952 through June-July, 1961.

As I say, these have been shown to the complainant and I now tender them in evidence, your Honor.

Hearing Examiner Haycraft: Is there any objection?

Mr. Adair: We have no objection.

Hearing Examiner Haycraft: Respondent's Exhibits 133-A through Z-44 are received in evidence.

(The documents referred to were marked Respondent's Exhibit 133-A through Z-44 and received in evidence and ordered SEALED.)

* * * * *

(Tr. p. 6271)

Harry Nickelson

was called as a witness for the Respondent, and having

Harry Nickelson—Direct

first been duly sworn, was examined and testified as follows:

* * * * *

DIRECT EXAMINATION

Mr. Pride: Mr. Royall mentioned that Mr. Nickelson is appearing here voluntarily and the main purpose in enabling

(Tr. p. 6272)

us to expedite this proceeding, as has been said, he will testify to some of this Neilson data, present some tabulations and summaries from it and I would assume from your Honor's ruling, and I say this at Mr. Nickelson's request, that these two would have the same in camera status.

Hearing Examiner Haycraft: The exhibits may, yes.

By Mr. Pride:

Q. Mr. Nickelson, what is your occupation today? A. I am an executive vice president of the A. C. Neilson Company.

Q. Was that the same position which you held when you testified here before? A. No. My title has changed from vice president to executive vice president.

* * * * *

(Tr. p. 6274)

* * * * *

Q. Mr. Nickelson, as far as that exhibit 133 is concerned, does it provide a basis for comparing market shares for Chlorox liquid bleach for the four years before Procter and Gamble's acquisition of the Chlorox Company? A. Yes, it does.

Harry Nickelson—Direct

Q. Do the figures there also provide a basis for comparing market shares for the four years subsequent to the acquisition? A. Yes, it does.

* * * * *

(Tr. p. 6275)

* * * * *

Mr. Adair:

* * * * *

Furthermore, I would like to point out, sir, that as Mr. Royall has pointed out in this record, I find many, many times, there is a stipulation with regard to the Neilsen information, which in effect states—and I can quote you Mr. Royall any number of times—to the effect that it conclusively shows the Neilsen data, both consumer dollars and quart equivalents and the other that is mentioned here, is for the purpose of this case, relevant, competent evidence, and there is no distinction made.

* * * * *

(Tr. p. 6279)

* * * * *

By Mr. Pride:

Q. Will you tell us, Mr. Nickelson, as an officer of the Neilson Company, which of these two bases are a better guide, is a better guide for gauging market shares or market conditions.

Hearing Examiner Haycraft: I am going to tell the witness that I am going to pay attention to his testimony as an expert statistician, economist, what view, not as an executive of the Neilsen Company. That doesn't make any difference to me what executive position he may hold. That has no bearing on it. I want his personal opinion as an economist and statistician.

Harry Nickelson—Direct

Mr. Pride: I don't want to hold Mr. Nickelson out as something I do not believe he would pretend to be. I don't think Mr. Nickelson regards himself as an expert economist, marketing expert, statistician, but simply as one who regularly has supervision over the collection and compilation—

(Tr. p. 6280)

tion of that material.

Hearing Examiner Haycraft: Well, if you are not going to qualify him, I don't want his testimony.

Mr. Pride: I have qualified him as executive vice president of the Neilsen Company.

Hearing Examiner Haycraft: That is not a qualification that would satisfy me because they probably would be very happy to prepare these reports any way the client wants them.

Mr. Pride: Indeed. I am asking him on the basis of his experience——

Hearing Examiner Haycraft: Regardless of their opinion on it?

Mr. Pride: But I am asking him on the basis of his experience, which of these two bases is the better indicator of market conditions or market shares.

Will you answer that question, Mr. Nickelson?

The Witness: Well, I would regard the unit equivalent basis as the best basis to look at market shares, only because it is easier to use and it has fewer limitations. If you look at the dollars, bear in mind that they are subject to the influence of weekend prices by retailers, by special factory pack, that is a "cents off" deal of various kinds, by price changes at the factory level, which are subsequently reflected in changes in price at the consumer level, so that

Harry Nickelson—Direct

(Tr. p. 6281)

the dollar basis would require supplemental information in order to have proper reading.

Mr. Royall: Your Honor, may I say one thing on this, not as to this question, but because Mr. Adair quoted what had been said before. We want to make it clear, we are not in any way attacking the accuracy of these figures as to the thing they purport to say. And this question is not directed to the competency of the figures either on a quantity or a dollar basis. I think your honor clearly understands that.

We have never made that attack and we are not in any way varying from the stipulation.

By Mr. Pride:

* * * * *

Q. Let me show you, Mr. Nickelson, what has been marked Respondent's Exhibit 134 for identification. Let me ask you if that is a tabulation and summary prepared by you? A. It is.

(Tr. p. 6282)

* * * * *

Hearing Examiner Haycraft: Did I correctly understand the witness to say this was a tabulation and summary of the data taken from Respondent's Exhibit 133?

The Witness: It is taken from the table showing consumer sales on an ounce basis. I can't identify the number, your Honor.

Hearing Examiner Haycraft: Yes. All right.

Mr. Adair: Mr. Examiner, we have no objection, subject to the right to check the accuracy of the figures.

Hearing Examiner Haycraft: All right.

(Tr. p. 6283)

Harry Nickelson—Direct

Exhibit 134A-B is received.

(Whereupon, the document referred to, heretofore marked Respondent's Exhibit 134A-B for identification was received in evidence.)

By Mr. Pride:

Q. Will you describe what you have done in the preparation of this exhibit and what it consists of? A. This exhibit is in two parts, labeled Table A and Table B. Let's describe Table B first.

This table shows the Chlorox share of market by bi-monthly periods from August-September, 1952, through June-July, 1958. In addition to the bi-monthly shares, we have averaged the shares for each year ending with June-July, that is from 1953 through 1956. They are shown just opposite the figures for the bi-monthly shares. Then these average annual shares shown on Table B, are transferred over to the first page, or Table A in the left-hand column.

We then computed the point change in market share from one year to the next, we have added them up, secured the total change, and then provided an average annual change in market share for Chlorox prior to and after the acquisition.

Q. You say on page "A" of this exhibit you have shown the average annual change for each year before and after, is that correct?

(Tr. p. 6284)

A. That is right.

Q. What does that show respecting this? A. Well, it shows the average annual gain for the four years prior to the acquisition was almost one Neilson share point, that is .975 share points—

Harry Nickelson—Direct

Q. No. A. .975 share points, whereas in the four years after the acquisition, the average annual gain was .825 share points, or about 8/10ths of a share point. In other words, the gain after the acquisition was slightly smaller than the gain prior to the acquisition.

Q. Well, that—the pre-acquisition gain was, you say, .975, or about one Neilsen point and the post-acquisition gain was .825?

* * * * *

(Tr. p. 6285)

* * * * *

Q. You have talked here, Mr. Nickelson, you said you summarized these figures on this exhibit, on a 12-month basis. What is the purpose of doing this on a 12-month basis? A. Well, the purpose is to put the data in a form which can be easily understood. The original documents, which were issued, there were many, many of them involving bi-monthly periods all the way from August-September, 1952, through June-July, 1961. We regard the 12-month basis as the best basis to look at figures of this type in appraising market conditions and competitive conditions.

And they can easier be looked at by having a summary of all of the many, many changes which have taken place over this entire interval. It would eliminate, for instance, the seasonal fluctuations or the fluctuations for whatever reason, as they occur from bi-monthly period to bi-monthly period, or from bi-monthly period in one year to the same bi-monthly period in the other.

(Tr. p. 6286)

Q. I see.

Now, are data available, Mr. Nickelson, on a consumer dollar basis, by which a similar summary and tabulation

Harry Nickelson—Direct

can be made and in that connection I show you Commission Exhibit 721 and ask you if that contains such data?

A. Yes, it does.

Q. Have you, at our request, prepared similar summaries on the basis of the data contained in that exhibit, Exhibit 721, Commission's Exhibit 721? A. Yes, I have.

(The document referred to was marked Respondent's Exhibit 135A-B for identification.)

By Mr. Pride:

Q. I show you a tabulation which has been marked Respondent's Exhibit 135A-B for identification and ask you if that has been prepared by you. A. It has.

Q. Will you describe what you did in the preparation of that exhibit and what it shows? A. Well, this exhibit was prepared in a manner similar to the one we just examined.

* * * * *

(Tr. p. 6287)

* * * * *

For the four years prior to the acquisition, and for the four years after the acquisition. We then computed the average annual change per year for the four years prior to the acquisition and for the four years after the acquisition. And this table shows us that the average annual gain for Chlorox, prior to the acquisition, was .775, or a little less than 8/10ths of one Neilsen share point, whereas after the acquisition, it was .875, or about 9/10ths of a Neilsen share point.

And we considered changes of this magnitude not statistically significant. It would be about 1/10th of one percentage point difference and I would make the same remark with respect to the previous exhibit.

* * * * *

Harry Nickelson—Direct

(Tr. p. 6288)

* * * * *

By Mr. Pride:

* * * * *

(Tr. p. 6289)

* * * * *

Turning to the last year shown on that, on page A, Exhibit 134A, what is the difference in the market share of Chlorox in the last year shown on that exhibit, as compared with the preceding year ending August 1, 1960?

A. Well, for the year ended August 1, 1961, Chlorox's share on the 32 ounce equivalent unit basis, was 48.6 per cent.

For the year immediately preceding, it was 48.8 per cent, or Chlorox's share declined 2/10th of one Neilsen share point during the latest 12 months on this report.

Q. I see. Now, do you have Exhibit 135 there? A. Yes.

Q. 135 is on the consumer dollar basis, right? A. Yes.

Q. Now, what does page A of that exhibit show as to the gain in the Chlorox market share in the last year shown on that exhibit over the preceding year, which ended August 1, 1960, as indicated here? A. It shows that Chlorox' Share on a consumer dollar basis increased one-tenth of one Neilson share point.

Q. Let me ask you, Mr. Nickelson, in considering data respecting market shares over a number of annual periods such as the data set forth on these two exhibits, would any particular annual period be more indicative of current market conditions than others?

(Tr. p. 6290)

Harry Nickelson—Direct

A. Well, yes, the latest year would be more indicative of current conditions.

Q. I see. Incidentally, Mr. Nickelson, I think you testified that the consumer sales reported by Neilsen in any particular bi-monthly period might be affected by a number of influences, seasonal, temporary fluctuations and so forth.

Is that correct? A. That is right.

* * * * *

(Tr. p. 6291)

* * * * *

Q. Turning here to some pages on Commission Exhibit 718, which was introduced at the last hearing, which is a list of—Commission Exhibit 718A-F, I should say—which is a list of certain Chlorox promotions, that exhibit, Mr. Nickelson, is in camera, so I cannot show it to you. But I simply state that it does show the dates on which merchandise involved in these promotions was first shipped from a Chlorox plant.

Now, let me ask you: Can you tell me, could you tell from such shipping dates, when the merchandise so shipped would reach the shelves of the grocery stores and be available to consumers.

Mr. Adair: I object, Mr. Examiner.

(Tr. p. 6292)

Hearing Examiner Haycraft: This is a proper question. Objection overruled. He is asking him as a statistician whether he can tell.

Mr. Adair: He says he is not a statistician and—he is just a vice president of Neilsen.

The Witness: Executive vice president.

Harry Nickelson—Direct

Hearing Examiner Haycraft: Go ahead, you may answer the question. How long would it take these goods to get on to the shelves of the store?

The Witness: I don't know. As a matter of fact, it takes varying times, depending upon the store, the location, and many, many other factors. After all, it takes time from the shipping date to reach the wholesale channels of distribution or to chain warehouses, it takes more time to get it to retail stores, furthermore, the shipping dates are not all the same, so I can't tell what date the merchandise would have been available for sale on the shelves. It just takes time and the time varies, store by store.

By Mr. Pride:

Q. I see.

Now, for example, I note here that this Exhibit 718C shows that there was a, what is listed as a free-sponge pack promotion that was first shipped from Chlorox plant on July 11, 1960?

(Tr. p. 6293)

A. Pardon me, what was that date?

Q. July 11, 1960. I am just using an example here. Let me ask you: How much of the movement, could you tell us how much of the movement of that merchandise from the grocery stores would be reflected in the Neilsen reports for June-July, 1960.

* * * * *

The Witness: Well, very little, if any, merchandise shipped on July 11, would be reflected in a June-July report.

Hearing Examiner Haycraft: As a matter of fact,

(Tr. p. 6294)

Harry Nickelson—Direct

wasn't that shipped, in your experience, for sale in the fall, early fall, late summer promotions?

The Witness: I wouldn't want to testify as to when this was intended for. But I do know when our audit dates were taken, your Honor, and by the time this merchandise could have reached the store, our ending audits for this period would have been over for the most part. And even for those few stores which would have had it available for sale, they would have been selling this new merchandise only a day or two or a few days out of their total of a 60-day cycle, under which these audits are being made. So it is apparent, in view of my knowledge of the ending audit date, that very little of it could have been reflected under any set of circumstances.

Hearing Examiner Haycraft: In that period?

The Witness: Well, assuming the beginning shipment date of July 11, and obviously all of this merchandise was not shipped on the first date.

Hearing Examiner Haycraft: How long after that date would you say the sales, the audit would reflect the merchandise shipped under these promotions?

The Witness: Your Honor, it would be a varying thing, dependent upon when the stores received it. Some of these stores would not receive it until several weeks afterwards and it would take some while for the first store to get

(Tr. p. 6295)

it. The balance of them would be getting it over a duration of time, and even there it takes them a differing length of time in order to move this merchandise.

Hearing Examiner Haycraft: Would you say the next four months should reflect it, August-September and October-November?

Harry Nickelson—Direct

The Witness: I would say it would reflect practically all of it, yes, the bulk of it. Yes, your Honor.

* * * * *

Hearing Examiner Haycraft: That is all right. We will now receive 135 in evidence.

(Whereupon, the document referred to, heretofore marked Respondent's Exhibit 135A-B for identification, was received in evidence.)

* * * * *

(Tr. p. 6299)

* * * * *

Mr. Royall:

* * * * *

We are seeking to establish that the geographical territories of Neilson are in no sense market areas for

(Tr. p. 6300)

liquid bleach. They do not correspond with them in any way. They do not include the competitive areas. There is no instance where they do.

Hearing Examiner Haycraft: I disagree with you on that. And that is the reason I made the finding that I did and apparently the reason the Commission has adopted the same theory, and I do not believe it is up to me to take any further testimony on that or to allow you to change that at this time.

It is not a part of the mandate. For instance, to give an illustration where I think you are entirely wrong, you have a metropolitan Chicago. That certainly is a competitive area. You have metropolitan New York. You have other areas which have large consuming centers in them and where your firm is competing every day with other firms.

Harry Nickelson—Direct

Now I don't care, it may not be the type of a market area that you or I would like to have, but it is the only evidence that there is in the record that gives us any idea as to what the competitive situation is in the market areas.

Mr. Royall: Your Honor, let me answer that this way: If you had permitted us to go ahead, we would have said that in the two metropolitan areas that there is pretty much a coincidence, but even there not a complete one.

In the other areas, you find a different situation. In many areas, for example, it appears that the

(Tr. p. 6301)

competitive area, that is where the bleach companies are competing, is only a small segment, or sometimes a medium segment, of a Neilson area. But certainly not——

Hearing Examiner Haycraft: Geographically, perhaps, but volume-wise, no.

(Tr. p. 6307)

By Mr. Pride:

Q. Now have you, at our request, compared and summarized this market share information which is taken from Respondent's Exhibit 133, and in that connection I show you what has been marked here as Respondent's Exhibit 136-A to R.

(The document referred to was marked Respondent's Exhibit 136-A-R for identification.)

Hearing Examiner Haycraft: And that is by Neilson

(Tr. p. 6308)

territories, is that correct?

Harry Nickelson—Direct

Mr. Pride: That is right, your Honor, and I again emphasize that we are putting this into cover these areas which we believe are not proper, are not appropriate.

Hearing Examiner Haycraft: Of course I will make this ruling, that you are not waiving any of your objections in preparing these exhibits.

Mr. Pride: Thank you, sir.

By Mr. Pride:

Q. Have these tabulations, Mr. Nickelson, that appear on Exhibit 136-A to R, been prepared by you? A. Yes, they have.

Q. I wonder if you would describe the exhibit and how it was prepared. A. Well, this exhibit contains two summary tables for each of the nine Neilson territories and each of the two tables are listed—the first two tables are listed as “A and B.” And let us describe the detail shown on these tables for the specific territory as an example for all of the rest.

Again, these have been prepared in a manner similar to the one which was used in connection with the national summary tables.

On the second page of the exhibit, for each territory, we have shown the bi-monthly share of market for Chlorox,

(Tr. p. 6309)

on a 32-ounce equivalent basis, for each bi-monthly period from August-September, 1952, through June-July, 1961.

And again we have averaged the bi-monthly shares for each year ending June-July, and those are shown on the right of the first column of figures.

Again we transferred those average annual shares to the left hand column on the first page of the exhibit, and we have then computed changes in share from one year to

Harry Nickelson—Direct

the next, in terms of Neilson points, one place past the decimal point, and finally we have provided an average annual change in share for Chlorox for the four years prior to the acquisition, and for the four years after the acquisition.

Q. I see. And you have done that for each one of these nine standard Neilson territories, is that right? A. Yes, I have.

Mr. Pride: I offer this exhibit in evidence.

Mr. Adair: No objection, subject to the right to check.

Hearing Examiner Haycraft: All right. It is received.

(Respondent's Exhibit 136-A-R was received in evidence.)

* * * * *

(Tr. p. 6311)

* * * * *

Q. I show you these tabulations which have been marked Respondent's Exhibit 137 for identification. Have you prepared the tabulations and summaries on that exhibit? A. Yes.

Mr. Pride: I offer it in evidence.

Mr. Adair: No objection.

* * * * *

Hearing Examiner Haycraft: It may be received.

(The document referred to, heretofore marked Respondent's Exhibit 137 for identification, was received in evidence.)

By Mr. Pride:

Q. Will you describe this exhibit 137, Mr. Nickelson? A. Yes, sir. This exhibit contains a table showing consumer sales of all liquid household bleaches other than

Harry Nickelson—Direct

(Tr. p. 6312)

Chlorox. Figures are shown for the five years prior to the acquisition, and for the four years following the acquisition, in terms of both 32 ounce equivalent units, and consumer dollars. And these figures can all be checked, Mr. Adair, from previous exhibits. They are set up on the basis of annual totals, for years ending August 1, for 1953 through 1961.

As an example, the figure for household bleach sales other than Chlorox for the year ended August 1, 1957, amounted to 319,734,000 32-ounce equivalent units.

And for the latest year under observation, or the year ended August 1, 1961, sales of all bleaches other than Chlorox, amounted to 365,354,000 equivalent quart units.

In other words, an increase of about 45 million units. Likewise on a dollar basis, as an example, the sales for bleaches other than Chlorox for the year immediately prior to the acquisition, amounted to \$49,478,000, and that again is consumer dollars, at prices which consumers paid for their purchases of liquid bleach, and for the last year under observation, sales for products other than Chlorox amounted to \$59,254,000, or again from pre-acquisition level to the final year of approximately \$10 million.

Incidentally, there were gains of 32-ounce equivalent basis for every year from 1958 through 1961 and on a consumer dollar basis, there were gains for competition to Chlorox during every year except for the year ended August 1, 1960,

(Tr. p. 6313)

when there was a very narrow turn-down.

Q. Let me just ask you a couple more questions, Mr. Nickelson.

Harry Nickelson—Direct

I direct your attention to the last line showing the sales of competitive bleaches, the year ending August 1, 1961 and I ask you in terms of 32-ounce equivalents, how much was the increase in the sales of these competitive bleaches for that year over the preceding year ending August 1, 1960.

* * * * *

(Tr. p. 6314)

* * * * *

The Witness: It was between 19 million ounces and twenty million ounces. I have not made that—

By Mr. Pride:

Q. You mean 19 million 32-ounce equivalent units?

A. Equivalent units, that is right.

Q. And looking at the same bottom line, would you tell us what the increase in dollars, consumer dollar sales, on this consumer dollar basis of competitive bleaches, what the increase was for the year ending August 1, 1961, over the preceding year, ending August 1, 1960? A. It was over \$3 million.

Q. Without going into any more specifics, Mr. Nickelson, and to terminate this without any further specific reference to this exhibit, let me ask you, in summary, is it fair to say that the data which you have summarized on this exhibit, Respondent's Exhibit 137, shows that these competitors of Chlorox, in every year since it was acquired by Procter, have sold more liquid bleach for more money than they did in any

(Tr. p. 6315)

year prior to the acquisition and that in the year ending August 1, 1961, they were selling more bleach for more money than at any time in the history of the bleach industry? A. That is a correct statement.

Harry Nickelson—Direct

Mr. Adair: I think the witness would like to correct his statement. He said that is a correct statement. There was one flaw in it. The year August 1, 1960, was a decline.

The Witness: I pointed that out.

Mr. Adair: But his questions did not assume it.

The Witness: He was referring to the latest year.

Mr. Pride: I said in the latest year they were selling more bleach for more money than in any year in the history of the bleach industry. That is a correct statement. I think I have no further questions, your Honor, and I will conclude my examination.

* * * * *

(Tr. p. 6316)

* * * * *

CROSS EXAMINATION

By Mr. Adair:

* * * * *

Q. Is Procter and Gamble your account? A. No, Mr. Adair.

Q. Whose account is it?

(Tr. p. 6317)

A. It is handled under my supervision. I am an executive vice president, and I have seven vice presidents under me, who do handle accounts. I have a man who handles the Procter and Gamble work, under my direct supervision, but I did handle it myself from 1954 to about 1958, and I continued to go to the Procter and Gamble Company, either at their request or at the request of some of our men, so I keep my fingers in the account work at Procter and Gamble Company.

Q. In other words, the vice president that has the immediate responsibility for Procter and Gamble account reports to you? A. Yes, he does.

Harry Nickelson—Cross

Q. And you have this account for all of its products, all of Procter's products? A. Yes.

Q. How many executive vice presidents does Neilson have? A. Six.

Q. Is Procter and Gamble the largest account you have supervision of? A. Yes.

Q. Are there any larger accounts that Neilson has, other than Procter and Gamble, and if so, name them. A. There were not—the answer is No.

Q. It is the largest account Neilson has? A. Procter and Gamble is the largest account Neilson has.

(Tr. p. 6318)

Q. Will you tell us what Procter and Gamble subscribes for from Neilson? A. You mean the product classes?

Q. Yes, sir, volumes, the Neilson indexes you sell to them. A. I am not sure I can recite from memory all of the product classes that are involved. But I believe it would be a correct statement to say that they buy Neilson's service on all product fields in which they are interested.

Now they have many—

Q. What do you mean interested? A. In which they have an entry, in which they have a product. Now as far as the number of products are concerned, I can't testify as to the number that are involved.

* * * * *

Q. How many subscribers do you have for Neilson's service for liquid bleach, Mr. Nickelson? A. Up until about two months ago we had two. We now have three.

Q. Who are they? A. They are Chlorox, Purex, and Climaline.

* * * * *

Harry Nickelson—Cross

(Tr. p. 6319)

Mr. Royall: Let me ask this: Is this about some other company?

Hearing Examiner Haycraft: Yes, Climaline.

Mr. Royall: We object to that, your Honor.

I don't know what that has to do with it. I assume they have some other purpose, but certainly we cannot go into matters that did not come up. I don't know who Climaline is.

Hearing Examiner Haycraft: I will stop the testimony. Tell us where they are located and that will be all.

The Witness: I am not even sure. I think it is Ohio.

By Mr. Adair:

Q. Do they buy it on a regional basis? A. Yes, sir.

Hearing Examiner Haycraft: No further testimony on that, please.

Mr. Adair: All right, sir.

(Tr. p. 6326)

Lawrence Stratton

was called as a witness for the Commission, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Adair:

(Tr. p. 6335)

Lawrence Stratton—Direct

Hearing Examiner Haycraft: Do I understand you correctly, are you criticizing the fact that they took five years in one table and four in the other?

The Witness: No. It seems to me the figure here, on 135-A, which is 0.3, at the top of the lower section of the righthand column, results from a comparison between the last year of the Chlorox operation as an

(Tr. p. 6336)

independent, and the first year of the P and G operation of Chlorox.

If that is what they had in mind, that is all right. But it seems to me it introduces a link between the two operations here.

* * * * *

(Tr. p. 6337)

* * * * *

Hearing Examiner Haycraft: Am I to assume then both sides have closed?

(Tr. p. 6338)

Mr. Royall: Yes, sir; we have closed.

Hearing Examiner Haycraft: Mr. Adair?

Mr. Adair: Yes, sir.

* * * * *

(Tr. p. 6345)

* * * * *

Hearing Examiner Haycraft:

* * * * *

With that understanding, then, we will adjourn this proceeding at this time with the understanding that counsel on both sides will have until January 15th to submit any proposed findings they wish to submit; that each side thereafter will be allowed until the 1st of February to answer

1554a

Harry Nickelson—Direct

those proposed findings that have been submitted on the 15th of January.

So I will close the taking of testimony at this

(Tr. p. 6346)

time, with that understanding, and after that is done, I will close the record.

* * * * *

**1555 In the United States Court of Appeals for the
Sixth Circuit**

**Before: WEICK, Chief Judge, PHILLIPS, Circuit Judge,
and GREEN, District Judge**

Minute entry of argument and submission—October 21, 1966

This cause is argued by Frederick W. R. Pride and Kenneth C. Reyall for Petitioner and by Gerald Harwood for respondent and is submitted to the Court.

1556 [File endorsement omitted]

**In the United States Court of Appeals
for the Sixth Circuit**

No. 15769

**THE PROCTER & GAMBLE COMPANY, PETITIONER
v.**

FEDERAL TRADE COMMISSION, RESPONDENT

**PETITION FOR REVIEW OF AN ORDER OF THE FEDERAL TRADE
COMMISSION**

Opinion Decided March 18, 1966

**Before WEICK, Chief Judge, PHILLIPS, Circuit Judge, and
GREEN,* District Judge**

WEICK, Chief Judge. This is a proceeding to review an order of the Federal Trade Commission requiring The Procter & Gamble Company to divest assets of Clorox Chemical Company alleged to have been acquired by it in violation of Section 7 of the Clayton Act. 15 U.S.C. § 18.

The complaint filed by the Federal Trade Commission was served on October 7, 1957. It alleged that Procter is the lead-

* Honorable Ben O. Green, Judge, United States District Court for the Northern District of Ohio, sitting by designation.

ing producer in the United States of soap and detergent products, which it sells under brand names, and a major producer of other consumer products sold under brand names. The complaint further alleged that on August 1, 1957 Procter acquired Clorox Chemical Company, which was the nation's largest producer of household liquid bleach, and that Clorox sold its product nationally under the trade name of "Clorox".

1557 The complaint further alleged that Procter's acquisition of Clorox may substantially lessen competition or tend to create a monopoly in the sale of household liquid bleaches, in violation of Section 7 of the Clayton Act.

Procter filed an answer admitting its acquisition of the assets of Clorox, but denying the alleged probable anticompetitive effects of the acquisition and denying that it violated Section 7 of the Clayton Act.

Following hearings before a hearing examiner over a period of about fourteen months, the examiner issued his initial decision on June 17, 1960, finding that the acquisition violated Section 7 of the Clayton Act and ordered divestiture.

Appeals were taken to the Commission and on June 15, 1961, in a per curiam opinion, the Commission set aside the initial decision of the examiner because the record as presently constituted did not provide an adequate basis for determining the legality of the acquisition. It recognized that under such circumstance it might dismiss the complaint, but concluded that the public interest would be better served by remanding the case for the taking of additional evidence. It stated that the remand would afford a more complete post acquisition picture and allow "the Commission an informed hindsight upon which it can act rather than placing too strong a reliance upon treacherous conjecture."

The hearing examiner was directed to receive evidence relating to the competitive situation as it presently exists in the liquid bleach industry and was instructed that the evidence should relate to events occurring since November, 1958, and should include market share data in geographical regions, as well as information directed to more clearly delineating the production and merchandising facilities and techniques utilized by Clorox under the control of Procter.

Prior to the hearing on the remand Procter filed a complaint in the United States District Court for the District of Columbia, to enjoin the Commission from proceeding with the remand. Its motion for a temporary restraining order was denied on the Commission's representation that the remand proceeding would take no more than two days. The action was later dismissed. The remand hearing was held and completed in two days. The hearing examiner rendered his second initial decision on February 28, 1962, which, like his first initial decision, found against Procter and ordered divestiture.

On the second appeal to the Commission, it ordered reargument on all contested issues of fact and law presented by the entire record and not merely by the record on the remand. The Commission in a 74 page opinion decided against Procter, adopting substantially the hearing examiner's findings and recommendations, except that it permitted Procter to divest the acquired assets by means of a spin-off.

Procter presents two questions here, namely, (1) whether the Commission's conduct of the proceeding and its reliance on matters de hors the record violated the Clayton and Administrative Procedure Acts and denied Procter due process of law; and (2) whether there was substantial evidence that the acquisition violated Section 7 of the Clayton Act. We will discuss these questions in the order presented.

THE COMMISSION'S CONDUCT OF THE PROCEEDING

As has been noted, the Commission rendered two decisions in this case. In the interim between the decisions, the personnel of the Commission changed, so that only one Commissioner participated in both decisions.

Procter argues that since the Commission found in its first decision that the record did not form an adequate basis for determining the legality of the acquisition, it should have dismissed the complaint instead of remanding the case to the hearing examiner for further hearings.

Although it is true that the Commission could have dismissed the complaint, in our opinion it was not required to do so. It had the power, in its discretion, to order a remand and to permit the introduction of additional evidence. The Commission's first decision was not a final decision. The case

was still pending before the Commission. At best, its first decision was interlocutory in nature and was subject 1559 to reconsideration and change. *Kirk v. Olson*, 245 U.S. 225 (1917); *Cia Mexicana DeGas v. F.T.C.*, 167 F. 2d 804 (5th Cir., 1964); 2 Am. Jur. 2d, Administrative Law, § 522.

Procter relies on *Texaco, Inc. v. F.T.C.*, 336 F. 2d 754 (D.C. Cir., 1964), where the Commission was criticized on this and on another ground. The Supreme Court, however, vacated the order of the Court of Appeals directing that the complaint be dismissed and remanded the case for further proceedings. In any event, it does not appear to us that the Court of Appeals set aside the order because of the Commission's conduct alone. 381 U.S. 739 (1965). The Supreme Court's treatment of Texaco does not support Procter.

THE COMMISSION'S ALLEGED RELIANCE ON MATTERS DE HORS THE RECORD

Procter asserts that the Commission's decision was based upon economic theories drawn from extra-record writings and was therefore violative of due process. It states that the decision was premised and critically based upon 85 citations of 43 extra-record writings which purport to deal with economic, political and social concepts.

These cited writings were general in nature. None of them dealt with the facts in the present case. At no place in its opinion did the Commission regard the citations as evidence. There was no citation of any economic writings by the hearing examiner in his second initial decision, which adopted findings of fact and comprises about 88 pages of the record. The hearing examiner's first initial decision cites no such authority. The Commission apparently cited these writings to demonstrate that its decision comported with economic authority. The Supreme Court has cited and relied on economic writings in its consideration of Section 7 cases. *F.T.C. v. Consolidated Foods*, 380 U.S. 592 (1965); *United States v. Penn-Olin Chem. Co.*, 378 U.S. 158 (1964); *United States v. Philadelphia Nat'l Bank*, 374 U.S. 321 (1963); *Brown Shoe Co. v. United States*, 370 U.S. 294 (1962). See also *Ekco Products Co. v. F.T.C.*, 347 F. 2d 745 (7th Cir., 1965); *Crown Zellerbach Corp. v. F.T.C.*, 296 F. 2d 800 (9th Cir., 1961).

We find no error in this respect.

WAS THERE SUBSTANTIAL EVIDENCE THAT THE ACQUISITION OF CLOROX BY PROCTER WAS REASONABLY LIKELY TO RESULT IN A SUBSTANTIAL LESSENING OF COMPETITION IN VIOLATION OF SECTION 7 OF THE CLAYTON ACT?

It is difficult for us to harmonize the two decisions of the Commission in this case.

The decision of the first Commission set aside the first initial decision of the hearing examiner because the record as then constituted did not provide an adequate basis for determination of the legality of the acquisition. This is another way of saying that the evidence was insufficient to support a finding of illegality. The remand was for the sole purpose of taking post-acquisition evidence from which the Commission could rely on "informed hindsight" rather than "upon treacherous conjecture." The only evidence taken on the remand related to post-acquisition conditions.

The second Commission, contrary to the ruling of the first Commission, was of the view that the post-acquisition evidence was of little value and was admissible only in an unusual case (not the present case). It did discuss a portion of the post-acquisition evidence and stated that if it was considered it might furnish support for the findings which it made on the basis of other factors. It also mentioned that none of the phenomena (post-acquisition evidence) proved that the merger was unlawful. It stated that there had been no "dramatic" change in market structure or behavior in the years since the merger and that there was no basis for according the post-acquisition evidence particular weight since it "found its way, needlessly, into the record." The post-acquisition evidence will be discussed more in detail later.

The second Commission's decision was based entirely on the record submitted to the first Commission, which that body had ruled to be insufficient to support a finding of illegality.

1561. We must determine whether the findings contained in the opinion of the second Commission which conflict with those of the first Commission, are supported by substantial evidence.

Procter is an Ohio corporation. At the time of the acquisition it was the nation's largest domestic manufacturer of soaps, detergents, and cleansers. It also manufactured and sold some food products, paper products, shampoos, dentifrices, and home

permanents. It had assets in excess of one-half billion dollars, and annual sales of \$1.15 billion. It was an old, well managed and highly successful company, having some 56,000 shareholders.

Clorox Chemical Co. on the other hand was a relatively small company as compared with Procter. It was organized in 1928, and manufactured, distributed and sold a single product, "Clorox," a household liquid bleach which was used as a whitener as well as a disinfectant. Clorox was the largest producer of such bleach in the country.

During the period of five years prior to the merger, Clorox had a steady and continuous growth in sales, profits, and net worth. It had total assets (depreciated book value) of over \$12,000,000, of which \$4,000,000 was liquid, and had an earned surplus of over \$7,000,000. It had annual sales of slightly less than \$40,000,000, which constituted 48.8% of the national sales of liquid household bleach. It had thirteen plants located throughout the country, and was the only producer of bleach that distributed on a national scale. It employed no salesmen but marketed its product solely through brokers or distributors.

The merger negotiations were initiated by shareholders of Clorox, and after study for almost two years by Procter, they ripened into a merger, whereby Procter exchanged 639,578 shares of its common stock, worth about \$30.3 million, for the assets of Clorox, which were transferred to a Procter subsidiary.

Household liquid bleach is manufactured by a relatively simple process. Chlorine is introduced into a caustic soda solution, the resulting chemical reaction being one which forms sodium hypochlorite. The bleach consists of 1562 5¼% hypochlorite and 94¾% water. The bleach retails for about fifteen to nineteen cents per quart. It is a low priced, high turnover item, sold mainly to housewives, in grocery stores and supermarkets. Because of the weight of both the product and its container, as reflected in the high cost of shipping, it has been found feasible to market the bleach mostly in areas not more than three hundred miles from the location of its manufacture.

Procter had never engaged in the manufacture or distribution of household liquid bleach prior to the merger and there is no evidence that it ever planned to do so on its own. It was not a competitor, supplier or customer of Clorox.

There was no dispute between the parties over the line of commerce or the section of the country. The line of commerce was household liquid bleach and the section of the country was the nation and a series of regional markets.

The following table shows the market shares prior to the merger of the six leading producers of household liquid bleach and about two hundred small producers appearing under the title of "all other brands." The "All other brands" also include chain stores and supermarkets who sell their own private brands, and account for about 20% of the market.

"Market Shares of Household Liquid Bleach Manufacturers

(Consumer Dollar Basis)

<i>Brand</i>	<i>Percentage of Total U.S. Sales</i>
Clorox	48.8
Purax	15.7
Roman Cleanser	5.9
Woolly White	4.0
Hillex	3.3
Linco	2.1
Total	79.8
All Other Brands	20.2

The two hundred producers were mostly small concerns or individuals, some of whom were characterized as small "garage" or "down cellar" bleach producers. Only eight of such producers had assets in excess of \$1,000,000, and very few had assets of more than \$75,000.

The market shares of the six leading producers on a consumer dollar basis for the nine principal territories are shown on the table appearing at the end of this opinion as Appendix "A."

Although there was evidence that all producers use the same formula in the manufacture of liquid household bleach, Clorox attributed its success to its maintaining a high degree of quality control in its production process. The fact that prior to the merger its sales accounted for nearly fifty per cent of the market, would seem to indicate its product's wide acceptance and preference by housewives. The Commission, on the other hand, attributed the success of Clorox to extensive advertising. Clorox did spend about ten per cent of its sales in advertising. But even though the advertising was extensive, the product had to be good in order for it to obtain repeat-purchases by the

housewife. This is demonstrated by the fact that large chains like A&P and Safeway Stores carry Clorox on their shelves even though they market their own private brands of bleach.

The Commission was of the opinion that the household liquid bleach market was highly concentrated, with barriers making it virtually impossible to be penetrated nationally. It probably would be difficult to penetrate this market on a national scale without the expenditure of a large sum of money. There is no evidence that anyone has ever tried it. Clorox was the only producer in that field. The fact that the bleach is a low cost, high turnover item, with accompanying small profits, requiring many factories in strategic locations, would probably act as a deterrent. We would doubt that a small company like Clorox, with assets of only \$12,000,000, would deter large companies like Lever Brothers and Colgate-Palmolive Peet Co.,

(Procter's large competitors) from entering the field on a national basis if they concluded that the profits were sufficiently attractive to justify the expenditure required. We would think that any concern desiring to enter the household liquid bleach market would probably try it on a regional basis.

The fact that in addition to the six named producers sharing eighty per cent of the market, there were two hundred smaller producers, both prior and subsequent to the merger, would not seem to indicate anything unhealthy about the market conditions. And the post-merger evidence was to the effect that the other producers subsequent to the merger were selling more bleach for more money than ever before.

It was the position of Procter that it merely supplanted Clorox in the market and that the merger did not increase the market share of Clorox because Procter was not in that market.

The Commission points out that with Procter's huge finances, its know-how in the manufacturing and marketing of its own products, its eighteen hundred salesmen, and its ability to obtain discounts in advertising, it is in a much better position than Clorox to compete with all the bleach competitors, and that Procter could sell for lower prices (even below cost) and this would probably lessen competition.

But Clorox, and not Procter, had the know-how in the household liquid bleach business as evidenced by its success

in starting from scratch and building a \$12,000,000 corporation with sales of nearly \$40,000,000 annually and obtaining over forty-eight per cent of the market. The finances of Clorox, although not comparable with Procter's, were entirely adequate for its purpose and enabled it to continue its growth and to maintain and increase its share in the market. There has been no significant change in Clorox's market share in the four years subsequent to the merger.

Procter has eighteen hundred salesmen. Since the merger Procter has continued with Clorox distributors and has not used its own salesmen. Assuming that it may desire at 1565 some time to change over to salesmen, it is not probable that it could do so without substantially increasing the size of its sales force, which would involve additional expense. It is of course possible that some economies could be effected if a changeover is made, but that is no reason to condemn a merger otherwise lawful.

Clorox spent about ten per cent of its sales in advertising. Procter, in its soap and cleansing products business, is one of the nation's largest advertisers, spending about \$70,000,000 in the year of the merger, and an additional \$47,000,000 for promotion. The Commission points out that Procter could obtain larger discounts than Clorox in television network, newspaper and magazine advertising, and could adapt the advertising on a national or local basis as the need arises. Clorox used principally spot announcements rather than network advertising, which were effective and very adequate for its own purpose. The cost of network advertising would seem to depend on the type of talent utilized on the program. TV stations, magazines and newspapers are not required to give discounts for quantity advertising and presumably could discontinue them at any time. Doubtless Procter could advertise more extensively than Clorox, but there is such a thing as saturating the market. We find it difficult to base a finding of illegality on discounts in advertising. Here again, in our judgment the fact that a merger may result in some economies is no reason to condemn it.¹

¹ We cannot assume that Procter would divert the large sums which it found necessary to expend for advertising and promotion to maintain its competitive position in the soap and cleanser field to wipe out its competitors in the household bleach market.

The commission urges that Procter, with its complete line of household products, is in a much better position than Clorox to obtain desirable shelf space in grocery stores, for the display of all of its products, including bleach. The evidence is clear that Clorox, prior to the merger; with distributors and not a sales force of its own, obtained very adequate shelf space, 1566 even in chain stores and supermarkets which displayed their own private brands. Where a product like Clorox has great consumer demand, a grocer is very likely to display it in order to satisfy his customers. We find no merit in this claim.

The Commission directed attention to Procter's success in marketing new products. In 1957 Procter introduced a new abrasive cleanser called "Comet". At the time Procter entered the field, "Ajax", manufactured by Colgate-Palmolive, sold about fifty-six per cent of the total national sales of abrasive cleansers. Other leading brands were "Bab-O", which had twenty-four per cent of the total national sales, and "Blue Dutch", which had ten per cent. Over a period of twenty-two months Procter spent \$7.2 million in advertising and attained 36.5% of the national market; Ajax dropped to 36.9%, and all other brands, including Bab-O and Blue Dutch, fell from 44% to 26.6%.

If anything, this tends to show that Procter could have entered the liquid household bleach market on its own if it had desired to do so, and without having to defend the action of the Federal Trade Commission which followed its merger with Clorox. There is no evidence that it had any such intention. The share of the market it could have captured, whether it could have permanently retained it, and the cost, are matters of conjecture.

The Commission further points to an Erie County, Pennsylvania incident which took place after the merger, as evidence of the effectiveness of Procter's intensive advertising and promotion practices. Prior to the Erie incident, Clorox had about 52% of the market in that area, with "101", a brand sold by Gardner Mfg. Co., about 29% of that market. Purex, a competitor of Clorox, was not in that market. Purex decided to enter the Erie market. It introduced a new bottle and an alleged improvement in its bleach. It engaged in an intensive advertising and promotional campaign, offering re-

ductions of ten and fifteen cents on any size bottle and offering twenty and twenty-five cents reductions on half-gallon and gallon purchases. In about two months Purex captured 33% of the Erie market. Clorox dropped from 52% to 35%, and "101" brand dropped to 17%. Procter retaliated by offering its bleach at three cents off per quart, five cents off per half-gallon, and seven cents off one-gallon sizes. Subsequently it offered a one dollar value ironing board cover for fifty cents with each purchase of Clorox. Procter supplemented the regular newspaper advertising of Clorox with extensive TV spots. The market for Clorox was not only regained but its sales increased by 1% and Purex's share fell to 7%.

It was undisputed that Purex started this "price war". We think Procter was justified in retaliating to defend itself, to meet competition, and to prevent its business from being taken away. The incident revealed the power of Purex, which retreated after Procter adopted protective measures. It should be noted, however, that without the merger Clorox could, and in all probability would have resorted to the same measures and in all likelihood it would have obtained the same results. It had the know-how and the necessary finances to do so.

There was no evidence that Procter at any time in the past engaged in predatory practices, or that it intended to do so in the future. Ample authority exists for the Commission to deal with any such practices when the occasion arises. 15 U.S.C. § 13, Discrimination in prices—Underselling in particular localities; 15 U.S.C. § 14, Tying Agreements; 15 U.S.C. § 45, Unfair methods of competition.

The Commission urges that the merger eliminated a potential competitor, namely Procter. This issue was never raised until after all the evidence was in and the appeal was taken to the second Commission. There was no evidence tending to prove that Procter ever intended to enter this field on its own. Its promotion department, in considering whether to enter into the proposed merger with Clorox recommended against Procter going into the bleach business on its own. The Commission's finding, therefore, is based on mere possibility and conjecture.

1568 The merger in the present case was neither vertical nor horizontal, but conglomerate. The second Commission has characterized it as product extension. Since the

1950 amendments to Section 7, conglomerate as well as vertical and horizontal mergers come within the proscription of the Act. *United States v. Philadelphia Nat'l Bank*, 374 U.S. 321 (1963); *Brown Shoe Co. v. United States*, 370 U.S. 294 (1962).

In a Section 7 case it is necessary to determine whether there is a reasonable probability that the merger may result in a substantial lessening of competition.

Amended Section 7 was intended to arrest anticompetitive tendencies in their incipency. *United States v. Continental Can Co.*, 378 U.S. 441 (1964); *United States v. Philadelphia Nat'l Bank*, *supra*; *Brown Shoe Co. v. United States*, *supra*. A mere possibility is not enough, *United States v. E. I. DuPont de Nemours & Co.*, 353 U.S. 586 (1957); nor is certainty required, *United States v. Penn-Olin Chem. Co.*, 378 U.S. 158 (1964).

Prior to the merger Clorox was a well managed, adequately financed company, steadily increasing its business and having nearly fifty per cent of the market. It had no competition on the national scale. Competition existed only in regional areas. Procter merely stepped into the shoes of Clorox. Whether or not it can do better than Clorox in the liquid household bleach field, remains to be seen.

The Nielsen tables showing market share and point change on a unit and dollar basis, for a period of five years prior to the merger and four years after, do not reveal any significant change in the rate of growth of Clorox. Appendix "B".

Both tables showed a decline for Clorox in the year 1961. On the other hand, the total sales of liquid household bleach, other than Clorox, substantially increased both before and after the merger. Appendix "C".

It is obvious therefore that subsequent to the merger, competitors of Clorox sold substantially more bleach for more money than prior thereto. This evidence certainly does not prove anti-competitive effects of the merger. The Commission gave it no consideration.

We think the Commission was in error in ruling that post-merger evidence was admissible only in unusual cases and that it crept into the record needlessly in the present case, and in giving it no weight. This evidence was in the record, not needlessly, but because of the order of the first Commission.

The Commission relied on *F.T.C. v. Consolidated Foods*, 380 U.S. 592 (1965). The Supreme Court in that case did not hold that post-acquisition evidence was irrelevant and inadmissible. On the contrary it cited *United States v. E. I. DuPont de Nemours & Co.*, *supra*, as authority for considering such evidence. See also *Ekco Products Co. v. F.T.C.*, 347 F. 2d 745 (7th Cir. 1965); *Reynolds Metals Co. v. F.T.C.*, 309 F. 2d 223, 230 (D.C. Cir. 1962).² The Supreme Court said that the post-acquisition evidence should not be given conclusive weight or allowed to override all probabilities. It held that the Court of Appeals in that case attached too much weight to it.

Any relevant evidence must be considered in a Section 7 case involving as it does the drastic remedy of divestiture. The extent to which inquiry may be made into post-merger conditions may well depend on the facts of the case, and where the evidence is obtained it should not be ignored. The weight to be attached to it depends upon all the facts and circumstances of the case.

It is contended that Procter's behavior subsequent to the merger may have been influenced by the pendency of the present proceeding. This is pure conjecture. As before pointed out, Procter was not in the habit of indulging in predatory practices, and if it engages in such practice in the future the Commission has ample power to deal with it.

1570 The Commission and Procter rely on *Ekco Products Co. v. F.T.C.*, *supra*, which cited the Commission's decision in the present case. *Ekco* involved two acquisitions, one of which was horizontal, and the other conglomerate. The facts were different in *Ekco* and the Court very carefully limited the decision to the facts of that case.

In considering the question of the substantiality of the evidence, we cannot ignore the two conflicting opinions of the Commission based upon the same evidence. Where an agency overturns findings of fact of a hearing examiner, this fact is considered by a reviewing court. *Universal Camera v. N.L.R.B.*, 340 U.S. 474, 496, 497 (1951); *N.L.R.B. v. Ohio Calcium Co.*, 133 F. 2d 721 (6th Cir. 1943). Here the second

² Reynolds involved a vertical merger where post-merger evidence offered by the Commission showed that five of Arrow's seven competitors had by 1957 dropped from 14% to 47% below 1955 sales. If post-acquisition evidence is admissible to prove anticompetitive effects, it should also be admissible to establish that the merger resulted in no lessening of competition.

Commission rejected the findings of the previous Commission. In our opinion, the same rule applicable to hearing examiners ought to be applied here.

As pointed out by the first Commission, the findings of illegality may not be based upon "treacherous conjecture", possibility, or suspicion. And yet this is exactly what the second Commission indulged in by basing many of its findings and conclusions upon hypotheses which the record shows have never taken place. An illustration of this is the finding that Procter was on the "brink" of entering the market on its own. Household liquid bleach is an old product; Procter is an old company. If Procter were on the brink it is surprising that it never lost its balance and fell in during the many years in which such bleach was on the market. It had never threatened to enter the market. Cf. *United States v. Penn-Olin Chem. Co.*, *supra*, at 173.

Other large corporations which were competitors of Procter, such as Lever Bros. and Colgate-Palmolive, had capabilities of entering the field. Monsanto Chemical and Diamond Alkali Co. had engaged in negotiations with Clorox. There are many other large companies in the country which had similar capabilities of entering into a conglomerate merger. There was no reasonable probability that Procter would have entered the household liquid bleach market but for the merger. *United States v. Penn-Olin Chem. Co.*, *supra*.

Clorox desired to sell its assets. Its owners were reaching the age of retirement and wanted to transform their stock into a marketable security of a successful company. A small company could not qualify. Clorox either had to sell to a larger company or not sell at all.

The Commission recognized that complete guidelines for this type of merger have not yet been developed and that the case presented a challenge to it and to the courts "to devise tests more precisely adjusted to the special dangers to a competitive economy posed by the conglomerate merger." We do not believe these tests should involve application of a *per se* rule.

The Supreme Court has not ruled that bigness is unlawful, or that a large company may not merge with a smaller one in a different market field. Yet the size of Procter and its legitimate, successful operations in related fields pervades the entire opinion of the Commission, and seems to be the motivating

factor which influenced the Commission to rule that the acquisition was illegal.

Here Procter was merely adding another product to its line, which was somewhat akin to the products which it was already handling. They were all household items sold in grocery stores. It could have entered the market on its own, but decided not to do so.

Considering the record as a whole, we are of the opinion that the decision of the second Commission is not supported by substantial evidence. *Universal Camera v. N.L.R.B., supra.*

We see no point in remanding this case to the Commission. This protracted litigation, which is going on to its ninth year, should come to a close.

The order of the Commission is set aside and the cause is remanded with instructions to dismiss the complaint.

1572

APPENDIX A

MARKET SHARES OF LIQUID BLEACH BRANDS AS SHOWN BY THE NIELSEN FOOD INDEX FOR NINE TERRITORIES

Section of The Country	Clorox	Purex	Fleecy White	Hilax	Linco	Roman Cleanser	All Others
New England.....	56.0	10 —	—	—	—	—	44.0
Metropolitan New York.....	64.3	—	—	—	—	—	35.7
Middle Atlantic.....	71.6	—	—	—	—	—	28.4
East Central.....	42.4	5.0	5.2	0.9	0.7	27.2	18.6
Metropolitan Chicago.....	28.6	0.1	18.9	0.1	50.3	—	2.0
West Central.....	34.5	20.6	9.0	25.8	2.1	—	8.0
Southeast.....	52.6	16.0	5.7	—	—	5.3	20.4
Southwest.....	48.4	39.6	3.9	—	—	—	8.1
Pacific.....	39.2	42.4	—	—	—	—	18.4

* Percent of total sales of liquid bleach on a consumer dollar basis.

** No figure given if the brand listed is not sold in the area.

Source: 154X. The section of the country included in each of the Nielsen territories is shown on page 70 of OX 325 (certified to the Court, but not printed). The accuracy of the Nielsen data was stipulated (620a-21a).

1573

APPENDIX B

TOTAL UNITED STATES

 NIELSEN—LIQUID HOUSEHOLD BLEACHES
 SUMMARY OF CLOROX SHARE CHANGES

32 oz. Equivalent Unit Basis:

Year Ended:	Share	Point Change
August 1, 1953.....	41.4	—
August 1, 1954.....	43.0	+1.6
August 1, 1955.....	44.0	+1.0
August 1, 1956.....	44.8	+0.8
August 1, 1957.....	45.3	+0.5
Total Change.....		+3.9
Average Annual Change.....		+0.975
August 1, 1958.....	45.8	+0.5
August 1, 1959.....	46.8	+1.0
August 1, 1960.....	48.8	+2.0
August 1, 1961.....	48.6	-0.2
Total Change.....		+3.3
Average Annual Change.....		+0.825

Dollar Basis at Cost Price to Consumer:

Year Ended:	Share	Point Change
August 1, 1953.....	45.3	—
August 1, 1954.....	46.4	+1.1
August 1, 1955.....	47.1	+0.7
August 1, 1956.....	47.8	+0.7
August 1, 1957.....	48.4	+0.6
Total Change.....		+3.1
Average Annual Change.....		+0.775
August 1, 1958.....	48.7	+0.3
August 1, 1959.....	50.1	+1.4
August 1, 1960.....	51.8	+1.7
August 1, 1961.....	51.9	+0.1
Total Change.....		+3.5
Average Annual Change.....		+0.875

1574

APPENDIX C

TOTAL UNITED STATES

NIELSEN—LIQUID HOUSEHOLD BLEACHES

Sales of all liquid household bleaches—other than Clorox

Prior to Acquisition:

Year Ended:

	32 ounce Equivalent Units	Consumer Dollars
August 1, 1953.....	270,011,000	\$39,178,000
August 1, 1954.....	273,048,000	40,230,000
August 1, 1955.....	290,092,000	43,443,000
August 1, 1956.....	308,797,000	46,638,000
August 1, 1957.....	319,734,000	49,478,000

Subsequent to Acquisition:

Year Ended:

August 1, 1958.....	329,656,000	\$53,910,000
August 1, 1959.....	345,726,000	56,287,000
August 1, 1960.....	346,038,000	56,197,000
August 1, 1961.....	365,354,000	59,254,000

1575

[File endorsement omitted]

In the United States Court of Appeals
for the Sixth Circuit

No. 15769

THE PROCTER & GAMBLE COMPANY, PETITIONER

vs.

FEDERAL TRADE COMMISSION, RESPONDENT

Before: WEICK, Chief Judge, PHILLIPS, Circuit Judge, and
GREEN, District Judge.

Judgment—Filed March 18, 1966

On Petition for Review of an order of the Federal Trade
Commission,

This cause came on to be heard on the transcript of the
record from the Federal Trade Commission, and was argued
by counsel.

On consideration whereof, it is now ordered, adjudged and
decreed by this Court that the order of the Federal Trade
Commission be set aside and the cause remanded with in-
structions to dismiss the complaint.

No costs awarded. Rule 23(4).

Entered by order of the Court.

CARL W. REUSS,
Clerk.

Costs: None.

1576 [Clerk's Certificate to foregoing transcript omitted in
printing]

1577

Supreme Court of the United States.

No. —

October Term, 1965

FEDERAL TRADE COMMISSION, PETITIONER

vs.

THE PROCTER & GAMBLE COMPANY

*Order extending time to file petition for writ of certiorari—
June 14, 1966*

UPON CONSIDERATION of the application of counsel for petitioner(s),

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including July 15, 1966.

POTTER STEWART,
*Associate Justice of the Supreme
Court of the United States.*

Dated this 14th day of June 1966.

1578

Supreme Court of the United States

October Term, 1966

No. 342

FEDERAL TRADE COMMISSION, PETITIONER

v.

THE PROCTER & GAMBLE COMPANY

Order allowing certiorari—October 17, 1966

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

BLANK

PAGE